Supreme Court, U.S.
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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

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PAUL DAVID FINI CASTRIOTTA,

Petitioner

v.

THE STATE OF NEVADA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Must a sister state give Full Faith and Credit to a state civil extradition habeas corpus final judgment in which issues of fact and law were decided in a full and fair hearing upon the merits that extraditee was not a fugitive of justice?

II. Did the State of Nevada err in refusing to apply issue and claim preclusive effect (res judicata) to subsequent extradition demand, where findings of fact had been made in prior proceedings in which it was held that extraditee was not a fugitive of justice?

III. Is a demanding state barred from issuing further requisition applications for interstate extradition under issue and claim preclusion (res judicata) and the Full Faith and Credit Clause and Act where in prior proceedings it has been held in truth and fact by courts of competent jurisdiction that extraditee is not a fugitive of justice upon the exact same charges and

requisition application?

IV. Did Petitioner's continued arrests upon identical warrants placed in the National Crime Information Center Computer violate his constitutional right to travel interstate, in accordance with United States v. Guest, 383 U.S. 745 (1966) and Shapiro v. Thompson, 394 U.S. 618 (1969), in that a court of competent jurisdiction held him not a fugitive of justice?

V. Did the Nevada courts fail to provide Petitioner a full and fair hearing in an extradition habeas corpus proceeding when they held that Petitioner's evidence as to presence or lack thereof in the demanding state at the time of the offense was inadmissible and irrelevant despite this Court's holdings in Hyatt v. New York, 188 U.S. 657 (1903) and Michigan v. Doran, 439 U.S. 282 (1978)?

VI. In light of this Supreme Court's overruling of Ahrens v. Clark, 355 U.S. 188 (1948) in Braden v.

30th Judicial Circuit Court, 410 U.S. 484 (1973), did the Nevada courts err in refusing to address Petitioner's return to an unconstitutional trial in absentia when they held that the Nevada courts lacked jurisdiction to address such issues under Sweeney v. Woodall, 344 U.S. 86 (1952) as interpreted by Nevada case law?

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PETITION FOR WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

The Petitioner, PAUL DAVID FINI CASTRIOTTA, filing in pro se, respectfully prays that a Writ of Certiorari issue to review the order of the Nevada Supreme Court denying his appeal in the proceedings below.

OPINIONS BELOW

The written opinion of the Nevada Supreme Court denying Petitioner's appeal is cited as 111 Nev. ____, _____ P.2d ____, (Adv. Op. 10, January 25, 1995), and is reproduced in the Petitioner's Appendix, Exhibit A.

JURISDICTION

The Nevada Supreme Court's Opinion denying Petitioner's appeal was filed January 25, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS INVOKED

U. S. Constitution Article IV, Section 1:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

Article IV, Section 2, clause 2:

> A Person charged in any State with Treason,

Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Constitution Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V:
No person shall be deprived of life, liberty or property, without due process of law.

Amendment VI:
In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

Amendment VIII:
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV, Section 1:

No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On June 16, 1994, Paul Fini-Castriotta was arrested on Arizona warrant numbers CR 18937/19973 in Las Vegas, Nevada and on June 24, 1994 he was formally charged as a fugitive of justice. On or about July 1, 1994, Castriotta was arrested on and served the Governor's warrant for his extradition to Arizona.

On July 29, 1994, Castriotta filed a motion to dismiss the Governor's warrant based on the Full Faith and Credit Clause and res judicata principles. See Nevada Supreme Court Record On Appeal (hereinafter referred to as ROA) ROA Vol. 1, pgs. 76-95. On August 19, 1994, Castriotta filed his petition for writ of habeas corpus in the Nevada state district court challenging his extradition to Arizona. ROA Vol. 1, pgs. 131-220. A traverse to the State's response to Castriotta's writ of habeas corpus was filed on August 29, 1994. ROA Vol. 2, pgs. 326-340.

In this petition for writ of habeas corpus and his motion to dismiss, the Petitioner raised the following federal questions:

a. The Nevada Court must give full faith and credit to the valid final prior judgment of the Florida court which determined him not a fugitive of justice;

b. That the Nevada court must apply res judicata principles to estop the relitigation of the issue of fugitivity on these identical Arizona warrants that were defeated in the Florida courts by Petitioner, (fugitivity is the concept of presence in the demanding state or lack thereof);

c. That Petitioner's continual arrests violate his constitutional right to travel interstate and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution;

d. That the Nevada district court could not return Petitioner to an unconstitutional trial in absentia

held in Arizona and that to do so violates the Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution;

e. That this Court's holdings in over 100 years of jurisprudence dictates that the Petitioner be allowed to show that he was not present in the demanding state at the time of the alleged offense.

On August 29, 1994, a hearing was held on Castriotta's writ of habeas corpus and for a decision on the motion to dismiss the Governor's warrant under the Full Faith and Credit Clause and res judicata principles. The Honorable Judge Nancy Becker of the Eighth Judicial District Court summarily ruled that res judicata did not apply to the instant case and that a prior Florida judgment that Castriotta was not a fugitive of justice would not be given full faith and credit by that court. More specifically the court held:

"Apparently, under Florida law, Florida seems to

feel that it is appropriate to conduct an evidentiary hearing and that first there must be a presentation of the warrant of extradition; and once that's presented, it's prima facia proof; and that the documents in and of themselves only need to show a probable cause basis. Then Florida apparently allows the person who is accused of being a fugitive to present evidence. And if that evidence, by clear and convincing standard, is sufficient to rebut the presumption, then the State has the opportunity of producing other evidence, but it must be personal knowledge evidence . . . The cases cited - the U.S. Supreme Court cases cited by Florida don't say that at all. In fact, they say the exact opposite, you ain't supposed to do all of that . . . And I'm sorry, but I think that they are completely out of order, completely wrong, they're not entitled to full faith and credit. They have done something that is completely contrary to the U.S. Supreme Court cases in this matter and your motion to dismiss for full faith and credit is denied." (portions omitted), ROA Vol. 2, pgs 345-360.

Additionally, the court heard argument on Castriotta's writ of habeas corpus. At this hearing, Castriotta sought to establish that he was not in the demanding state under the principles of Michigan v. Doran, 439 U.S. 282 (1978). He sought to present

foreign Visa documentation and affidavits of a U.S. Embassy, all placing Petitioner outside the United States, The following is an excerpt of the transcript of that hearing. ROA Vol. 2, pgs. 345-360:

> Mr. Kennedy: "I would note, Your Honor, that the State of Arizona has alleged in its requisition that Mr. Castriotta was in the demanding state at the time and committed these overt acts. These affidavits--'
>
> The Court: 'And Mr. Castriotta has affidavits to say that he wasn't. As I've told you, the law doesn't allow one to conduct evidentiary hearings. Because that completely frustrates the purpose of extradition, which is that it be a relatively summary procedure."

The Eighth Judicial District Court of Nevada did not rule on the additional issues raised before that court as outlined above. All of the issues presented to the Eighth Judicial District Court were preserved in Petitioner's appeal to the Nevada Supreme Court. See Petitioner's Initial and Responding Briefs, Nevada Supreme Court.

On September 2, 1994, Judge Becker denied Castriotta's writ of habeas corpus and ordered his extradition to Arizona. Castriotta then moved for a stay of the proceedings so that he could file an appeal of this denial to the Nevada Supreme Court. The Nevada state district court denied the request for a stay by stating that no such right existed in Nevada. Castriotta then filed an Emergency Motion for Stay Pending Appeal and a Notice of Appeal with the Nevada Supreme Court on September 2, 1994, said stay was granted and a timely appeal was filed by Castriotta. On November 10 and November 21, 1994, respectively, Petitioner filed his opening and responding briefs before the Nevada Supreme Court. On January 25, 1995, the Nevada Supreme Court affirmed the decision of the Eighth Judicial District Court which denied Castriotta's petition for writ of habeas corpus challenging his extradition to Arizona.

STATEMENT OF FACTS

On August 27, 1986, Petitioner was indicted in Tucson, Pima County, Arizona on case number CR18937. On December 31, 1986, a supervening indictment was returned in Tucson, Pima County, Arizona on case number 18937/19973.

On January 15, 1987, a trial in absentia went forward without notice of the date to Petitioner herein, and a verdict of guilty was returned. ROA Vol. 2, pg. 337-338.

Petitioner denies being in Arizona and committing this offense and despite this fact, Petitioner has made numerous offers to voluntarily surrender if afforded his constitutional right to due process by the granting of a new trial. Indeed, the there exists certified documents which place the Petitioner in the hospital as an admitted patient on the dates in

question. However, the State of Arizona has rejected all such offers by Petitioner to return for a de novo trial.

On October 10, 1992, Petitioner was arrested in Pinellas County, Largo, Florida, on fugitive of justice warrants CR18937 and 19973 (the Florida case number on that matter was 99-57653). ROA Vol. 1, pg. 145. On January 8, 1993, Petitioner was arrested on the first Florida Governor's warrant based on the Arizona requisitioning documents. Petitioner had been in continuous custody, without bail, since his arrest in October. ROA Vol. 1, pg. 146

In February, 1993, Petitioner, through retained counsel, filed a petition for a writ of habeas corpus in regard to the Arizona based Florida Governor's warrant. The basis of the petition was that Petitioner: (a) was not a fugitive of justice; and (b) that the documents on their face were not in order.

On April 2, 1993, this writ was heard by Chief Judge Brandt C. Downey, III, of the Sixth Circuit Court, Pinellas County, Florida. After a full evidentiary hearing, Judge Downey determined, in a finding of fact made on April 5, 1993, that Petitioner was not a fugitive of justice (not in Arizona) and that the documents, on their face, were not in order. No appeal was filed by Arizona. Petitioner's App., Exhibit B.

On April 28, 1993, Petitioner was arrested as a fugitive of justice by Orange County, Florida sheriffs, in Orlando, Florida, based on the very same Arizona charges, CR 18937 and CR 19973, and once again held without bail. Pinellas County also issued a no bail detainer as a fugitive of justice from Arizona based on the same charges CR 18937/19973, which had just been decided before Judge Downey on April 5, 1993, and were the very basis of Petitioner's arrest

and detention in Orange County, Florida.

On May 14, 1993, Petitioner was re-arrested on a second Florida Governor's warrant, based essentially on the same requisitioning documents as the first Florida Governor's warrant. Petitioner, with counsel, opposed the extradition and filed another petition for a writ of habeas corpus based on res judicata, in view of the previous decision from Judge Downey less than one month prior. ROA Vol. 1, pg. 152-156

Chief Judge Adams of Orange County, Florida, ordered the Petitioner returned to Pinellas County before Judge Downey, applying the principles of res judicata without deciding the petition before him at the time. No appeal was filed by Arizona. On or about August 20, 1993, Petitioner was returned to Pinellas County, Florida and again arrested on the same Governor's warrant for a third time, with no bail. This was Pinellas County case number 99-57653. ROA Vol.

1, pg. 157, compare with pg. 145.

On November 30, 1993, Chief Judge Downey issued a final order which, again, dismissed the Florida Governor's warrant, based on Arizona CR 18937/19973. No appeal was filed by Arizona. The Petitioner was subsequently discharged on the dismissed Florida Governor's warrant. Petitioner's App., Exhibit C.

The Petitioner was once again arrested on the same Arizona warrants CR 18937/19973 in Las Vegas, Nevada, on June 16, 1994. On July 1, 1994, Petitioner was served a re-arrest (booking sheet), said arrest based on the Governor's warrant of Governor Bob Miller for the extradition of Petitioner to Arizona. On July 11, 1994 Petitioner filed a letter with Governor Miller asking his Excellency to investigate per NRS 179.185 and recall per NRS 179.219 his warrant which was issued in violation of the Full Faith and Credit

Clause and Act when considered in light of the prior Florida findings.

On July 29, 1994, Petitioner filed a motion to dismiss the Governor's warrant on the basis that the decision made by Judge Downey in Florida are res judicata and, therefore, precluded the state court of Nevada, Judge Becker, from re-litigating those same issues. On August 19, 1994, a petition for writ of habeas corpus was filed before the Honorable Judge Nancy Becker.

On August 29, 1994, a hearing was held on said petition, and for a decision on the motion to dismiss the Governor's warrant under the Full Faith and Credit Clause and/or res judicata. The court summarily ruled that res judicata was inapplicable in the instant case and that the prior Florida judgment would not be given Full Faith and Credit by that court. Additionally, the court heard limited arguments on the

petition for writ of habeas corpus. Due to certain procedural defects which were raised by the Petitioner, the state court continued the matter until September 2, 1994.

On September 2, 1994, Judge Becker denied the petition for writ of habeas corpus and ordered Petitioner's extradition to Arizona. Petitioner's Appendix Exhibit D. (This Court should note that the aliases listed on this Order are those of a co-defendant and not of the Petitioner herein. Further, on August 12, 1994, the Nevada district court was advised of this error and ruled that it would not give consideration to the aliases. Petitioner then moved for a stay to appeal to the Nevada Supreme Court. The district court denied this request and the Nevada Supreme Court, upon emergency motion for stay, subsequently granted same and timely appeals were filed. On November 10 and 21, 1994, respectively, the

Petitioner filed his opening brief and responding briefs in the Nevada Supreme Court. On January 25, 1995, the Nevada Supreme Court denied Petitioner's appeal from the denial of his habeas corpus petition by the Eighth Judicial District Court. Petitioner's App., Exhibit A.

On February 8, 1995, Petitioner filed in the Federal District Court, District of Nevada, a federal petition for writ of habeas corpus, which he subsequently moved to dismiss in order to pursue this writ of certiorari.

ARGUMENT

I. THE INCORRECT REASONING OF THE NEVADA SUPREME COURT.

The Nevada Supreme Court, in its incorrect holding that res judicata is not applicable to the instant case, relied on two cases for this proposition: Stone v. State, 85 Nev. 60, 450 P.2d 136 (1969) and In re Russell, 524 P.2d 1295 (Cal. 1974).

Stone is totally inapplicable to the instant case, and indeed, is not relevant to res judicata at all. The Stone court rejected the appellant's contention that his release on an extradition habeas corpus petition in New Mexico was res judicata. The New Mexico court discharged the appellant due to insufficiency of process upon an extradition habeas corpus where Nevada had attempted to extradite appellant. After appellant was eventually brought to Nevada, appellant

asserted that the New Mexico decision was res judicata as to any further proceeding against him in Nevada.

The Stone court correctly held that once the appellant was in the demanding state of Nevada, his New Mexico discharge for insufficiency of process was not res judicata to prohibit his prosecution on local charges in Nevada. This holding by the Nevada Supreme Court in Stone was quite correct. However, in the Petitioner's case, Petitioner had a court of competent jurisdiction in Florida make a finding of fact, on the merits, that the Petitioner was not a fugitive of justice. Such a finding of fact in a habeas corpus proceeding in Florida is conclusive and determinative to all issues of facts and law decided therein in a subsequent asylum state. In Crane v. Hayes, 253 So.2d 435 (1971), the Florida Supreme Court held:

"when the proceeding terminates in a final

judgment, the questions decided become res judicata. The decision is entitled to Full Faith and Credit in forums of the sister states." Shenk v. Shenk, 126 So.2d 286 (Fla. 1961); Accord, In re Marlow, 150 SE.2d 204 (N.C. 1966).

Of further importance is the fact that Florida clearly recognizes the right to appeal a habeas corpus judgment. Fla. R. Civ. P. 1.530, 1.540. A right which Arizona never pursued in the Florida proceedings. Florida courts clearly recognize res judicata as evidenced by Stack v. State, 333 So.2d 509 (Fla. App. 1976); Murphy v.Boehm, 443 So.2d 363 (Fla. App. 1983), and Wheaton v. State, 508 So.2d 492 (3rd Dis. Fla, 1987).

The Nevada Supreme Court further relied on In re Russell, to hold that it would not give res judicata effect to the Florida judgment in favor of Petitioner. Russell is the only case nationwide which holds that res judicata and Full Faith and Credit are not

applicable in interstate extradition where there has been a prior finding of fact that the petitioner was not a fugitive of justice by way of extradition habeas corpus. To allow this decision to stand will create an exception to well settled law of Full Faith and Credit and principles of res judicata and the applicability of these principles in the forums of sister states.

Petitioner would contend that the Full Faith and Credit Clause as well as the law of res judicata, issue and claim preclusion, do not allow for judicially created exceptions. The Nevada decision and Russell both create exceptions to the application of Full Faith and Credit and res judicata, in that Florida law controls, not Nevada or California law which has been erroneously applied in the instant case. Once a sister state court of competent jurisdiction decides a case on the merits after findings of fact, that judgment is entitled to the respect and deference of the courts of other states

under the law and usage of the judgment rendering state.. Nevada is no exception yet Nevada seeks to exclude itself from the Full Faith and Credit Clause and to ignore the fundamental meaning of res judicata. This Writ of Certiorari must be granted lest Nevada act independently of and without deference to the U.S. Constitution and well settled law nationwide.

II. THE NEVADA COURTS ERRED IN REFUSING TO ADHERE TO THE FULL FAITH AND CREDIT CLAUSE AND THE PRINCIPLES OF RES JUDICATA (ISSUE AND CLAIM PRECLUSION) AS TO THE PRIOR VALID FINAL JUDGMENT OF THE FLORIDA COURTS THAT PETITIONER IS NOT A FUGITIVE OF JUSTICE.

The facts of this case are not in dispute, as this petition centers on questions of law only. In the instant case, the Nevada courts were under the

incorrect belief that Nevada is not bound by the prior Florida decision which found that Petitioner is not a fugitive of justice from Arizona. The Nevada state district court held that because the Florida court conducted an evidentiary hearing on the issue of fugitivity (the concept of presence in the demanding state or lack thereof), that this judgment was "out of order," "completely wrong," and "was not entitled to full faith and credit." ROA Vol. 2, pg. 346. In addition to the fact that well settled legal precedent dictates that such an evidentiary hearing be conducted to establish extraditability, a valid, final judgment of a sister state is only subject to collateral attack on the issue of jurisdiction: whether the court had appropriate jurisdiction, personal or subject matter. State of Nevada v. Sustacha, 826 P.2d 959 (Nev. 1992); State v. Sixth Judicial District Court, 167 P.2d 648 (Nev. 1946).

In Milliken v. Meyer, 311 U.S. 339 (1940), this Court made the following important findings:

> "where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry . . . but if the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself."
>
> " . . . the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based; . . . whatever mistakes of law may underlie the judgment, it is conclusive as to all media concludendi." Id. at 342.

Based on the foregoing case law, the only means to attack the prior Florida judgment holding that Castriotta was not a fugitive from justice form Arizona was to question the court's jurisdiction. No doubt existed that Pinellas County, Florida was a court of competent jurisdiction to hear and decide all

matters as to the extradition of Petitioner to Arizona. In that the Nevada Supreme Court accepted the jurisdiction of this Florida court in its own opinion, it is clear that the Nevada courts erred in addressing any aspect of the Florida judgment outside of questions of the validity of jurisdiction.

In accordance with the principles of Michigan v. Doran, 439 U.S. 282 (1978), the Florida court ruled on two determinative Doran factors:

1. **that the documents on their face were not in order;**

2. **that Petitioner was not a fugitive of justice from Arizona** (in Arizona case number CR 18937/19973).

Based on these two determinations, but primarily upon the finding of fact that Petitioner was not a fugitive of justice, the Florida judgment remains a valid, final judgment on the merits and has not been

shown by the Respondent to be subject to collateral attack on the question of jurisdiction. In fact, Arizona and its agent Nevada are forever barred from attacking the Florida judgment on the merits when Arizona failed exercise its right to appeal the judgment. Morris v. Jones, 329 U.S. 545 (1947); Reed v. Allen, 286 U.S. 191 (1932).

The Florida courts at all times and in all cases involving "findings of fact" (as opposed to procedural dismissals and subsequent arrests) recognize issue and claim preclusion in interstate extradition. Murphy v. Boehm, supra, Stack v. Florida, supra, State v. Wheaton, supra.

The Florida judgment was reached after a full and fair hearing on the merits. More importantly, the Florida courts held that in the second extradition attempt that res judicata barred any further inquiry as to the Petitioner's fugitivity status on Arizona warrants

18937/19973. ROA Vol. 1, pg.94-95, hn 2 & 3; Petitioner's App. Exhibit C. In Stack, supra, the Florida court found that res judicata does apply in Florida to extradition proceedings and the law of habeas corpus.

Stack, supra, held that:

> "It is the well established general rule . . . that discharge upon habeas corpus operates as a bar and estoppel only as to the particular proceeding or procedures under review and is res judicata only upon the same question presented under the same facts. The principle of res judicata does not apply to cases of habeas corpus, to a judgment discharging the prisoner, where a new state of facts warranting his restraint is shown to exist different from that which existed at the time the first judgment was rendered. Id. at 510.
>
> "since the papers filed in a second proceeding seeking appellee's extradition are substantially identical to those filed in the first proceeding and since no new evidence was proffered, it seems clear that appellant (State)(added) was attempting to relitigate the same questions with the same evidence. . . this exemplifies the very concept of which gave rise to the doctrine of res judicata." Id.

It is abundantly clear that the current charges and requisition are identical to those addressed in the past and defeated in Florida, as evidenced by the Nevada Supreme Court decision.

In Castriotta v. State, 111 Nev. ___, ___ P.2d ____ (Adv. Op. 10, January 25, 1995), Petitioner's App. Exhibit A, the Nevada Supreme Court made the following important factual determinations based upon the appeals filed therein and the lower court record:

1. That Petitioner was arrested in Florida on Arizona charges;

2. That Petitioner filed a petition for writ of habeas corpus in Florida and was released from custody after a showing that he:

a.) was not a fugitive of justice(not in Arizona at the time of the offense);

b.) that the document's on their face were not in order;

3. That Petitioner was re-arrested in Las Vegas, on June 16, 1994, on the same Arizona warrants;

These factual determinations clearly establish that this is a case about the application of the law, and that the facts themselves are not in dispute. Sumner v. Mata, 449 U.S. 539 (1981). The above established facts of the case mandated only one obvious conclusion, which the Nevada courts ignored, to discharge the Petitioner.

The Nevada courts had a Constitutional obligation to give Full Faith and Credit to the prior valid, final judgment of the State of Florida which declared the Petitioner not to be a fugitive of justice from Arizona. Alternatively, the Nevada courts should have found that the Florida courts' finding of fact was entitled to res judicata effect and that the Petitioner need not once again establish that he is not a fugitive

of justice from Arizona.

Under the Full Faith and Credit Clause of the United States Constitution, at Article IV, Section 1, it states:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial proceedings of every other State . . ."

Further, in the Full Faith and Credit Act, 28 U.S.C. Section 1738, it states:

> "Such Acts, records and judicial proceedings, or copies thereof, so authenticated shall have the same full faith and credit in every court within the United States, and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they were taken." (emphasis added).

This Court held in Durfee v. Duke, 375 U.S. 106 (1963), that the "Full Faith and Credit Act requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it." It is clear from the

indisputable facts of this case, that Florida has already decided and given res judicata effect to its original judgment discharging the Petitioner. Petitioner's Appendix Exhibit C. ROA Vol. 1, pg. 94, hn. 2 & 3. Nothing remained for the Nevada courts to determine but to examine the record and establish that the Florida judgment is a valid final judgment upon the merits and to give Full Faith and Credit to that judgment as would (and have) the Florida courts under Florida law, not Nevada or California law. 28 U.S.C. Section 1738, Duke, supra.

The Nevada Supreme Court should have held that the Governors of Nevada and Arizona and the Nevada reviewing courts have violated the Petitioner's Fourth Amendment right to be free from unlawful seizure, Fifth Amendment Due Process rights in their failure to apply Full Faith and Credit and to give issue and claim preclusive effect to the Florida findings,

Eighth Amendment right to be free from cruel and unusual punishment, the Fourteenth Amendment, the Full Faith and Credit Clause and Act, and the Petitioner's constitutional right to travel interstate. All of these violations are of such an egregious nature as to amount to an overt miscarriage of justice.

III. CASTRIOTTA v. STATE CREATES A SQUARE CONFLICT WITH THE FINDINGS OF THIS COURT, COURTS OF APPEAL AND MANY STATE COURTS OF LAST RESORT.

This Supreme Court has had occasion to address the applicability of res judicata in the context of an extradition habeas corpus challenge. In Collins v. Loisel, 262 U.S. 426 (1923), Justice Brandeis held, for a unanimous Court, that:

> "It is true that the Fifth Amendment, in providing against double jeopardy, was not intended to supplant the fundamental principle of res

judicata in criminal cases, United States v. Oppenheimer, 242 U.S. 85 . . . and that a judgment in habeas corpus proceedings discharging a prisoner held for preliminary examination may operate as res judicata. But the judgment is res judicata only that he was at the time illegally in custody and of the laws and fact necessarily involved in that result."

The Collins, supra, decision relied on the language of such cases as In re White, 45 F. 237 (D. Minn., 1891) and United States v. Chung Shee, 71 F. 277 (S.D. Calif., (1895). Chung Shee, supra, set forth an outstanding review of the law of habeas corpus in relation to the concept of res judicata:

". . . it is well settled that the remanding to custody of the person claimed to be illegally imprisoned is not a decision to which the principle of res adjudicata is applied. . . If, on the other hand, the prisoner is discharged from custody, this is an adjudication that at the time he was entitled to his liberty, and is conclusive in his favor, should he be again arrested, unless some authority can be shown for holding him, which did not exist at the time of his discharge.'

'Again, it has been held that in proceedings

> upon habeas corpus the determination of the court upon the facts has the effect of a verdict of a jury. . . Indeed, the authorities without exception seem to hold that when a person has been discharged upon habeas corpus the issues of law and fact involved are res adjudicata, and the person so discharged cannot, for the same cause, be again lawfully arrested.'
>
> 'Thus it will be seen from this opinion that it is only where the prisoner is remanded that the decision of the court is not final." Id. at 279.

In the case of In re White, 45 F. 237 (D. Minn., 1891), the only federal case nationwide to squarely address the applicability of res judicata in interstate extradition upon findings of fact, it was held:

> "It is entirely possible that the plea of res judicata might under some circumstances be available in a case wherein extradition was sought upon a second or third warrant issued for that purpose. Thus, if upon an arrest made upon a warrant granted by the Governor, the question of identity of the person arrested with the one charged with an offense has been properly presented, heard and determined upon a return to a writ of habeas corpus, the decision being in favor of the one arrested, it might be that the same could be successfully

pleaded to a second arrest. Thus . . . if the question of identity had been presented and determined in favor of the realtor, it would seem that such decision should be final and that the realtor should not again be called upon to meet the issue.'

'If, however, the person arrested is released upon the ground of informality or mistakes in the proceedings, or upon some ground which does not decide the question whether upon the real facts the one arrested should be extradited for trial, such release, not being upon the merits, should not be a bar to a second arrest upon perfected papers or proceedings.'

'To support a plea of res judicata, the burden was upon the realtor to show that some issue had been heard and determined in his favor in the prior proceedings, of such a nature as to constitute an estoppel upon reinvestigation of the same question." Id.

The Collins decision and the above federal cases all support the overriding concept that res judicata is applicable, in an extradition context, to a judgment entered in a prior habeas corpus proceeding which effectively bars subsequent actions involving identical issues of facts or law. This Court should note

that the three above decisions all applied res judicata principles despite the fact that there was no right to appeal the judgment of a habeas corpus, unlike today. Arizona has never sought to appeal the Florida habeas judgment which discharged the Petitioner, or any subsequent discharges, even though such right does exist under Florida law.

State courts of last resort have also addressed the applicability of res judicata in interstate extradition. The doctrine of res judicata in extradition and its overriding purpose was most eloquently described in the case of Ex parte Messina, 128 S.W. 2d 1082 (Missouri, 1939):

> "The fundamental principles underlying res adjudicata are salutary. If the final judgment of a court having jurisdiction of the persons and of the subject matter be not final and conclusive between the same parties and involving the same dispute or offense then indeed we are drifting on an unchartered sea in

> a ship with neither sail or rudder. . . such unhappy controversies as these may endure until the entire impoverishment or the death of the parties renders their further continuance impracticable. If a final adjudication upon a habeas corpus is not to be deemed res adjudicata, the consequences will be lamentable. This favored writ will become an engine of oppression, instead of a writ of liberty." Id.

In Wells v. Sheriff, Carter County, 442 P.2d 535 (Okl. Cir, 1968), the Oklahoma Court of Criminal Appeals held that in a prior habeas corpus proceeding contesting extradition, wherein the defendant was discharged and declared not a fugitive, this court would give full faith and credit to a final judgment of a foreign state as long as it was sufficiently shown that such court possessed jurisdiction to determine the issues involved.

Wells is of extreme importance in that it upholds the concept of Full Faith and Credit to bar the relitigation of the facts that have already been

determined by a court of competent jurisdiction. As stated in Milliken, supra, the merits or legal reasoning of the prior court is not subject to review, only jurisdictional questions may be subject to judicial inquiry. This concept, as shown by Wells, indicates that Full Faith and Credit was applicable to this case.

In Marshall v. Greer, 344 P.2d 440 (Colo., 1959), the Colorado Supreme Court upheld the concept of issue and claim preclusion to bar successive applications of writs of habeas corpus, in an extradition proceeding, based on the same ground or facts that existed at the same time of the first application for writ. Marshall stated the following:

> "We fail to understand any contention that might be made to the effect that the rule of res judicata does not apply in such proceedings. If laws, or rules of law, are to be respected they must be respectable. Where the later charge is identical and for the same and exact offense that was determined in the first demand, and is adjudicated, then the doctrine of res judicata applies with

equal force as elsewhere." Id. at 441.

The case of Chakouian v. Hoy, Sheriff of Westchester County, 183 N.Y.S. 2d 980 (1959) provides additional insight into Full Faith and Credit in a prior extradition proceeding and why the holding in this case creates a square conflict with many state courts of last resort. In Hoy, the appellant was sought as a fugitive by Massachusetts. A Rhode Island court had custody over the appellant and, upon writ of habeas corpus, said court released the appellant for he was found not to have been within the demanding state (not a fugitive of justice) of Massachusetts at the time of the commission of the alleged offense. Thereafter, New York gained custody over the appellant and Massachusetts tried again to have him extradited to their jurisdiction. The Hoy court ruled that the prior decision of Rhode Island, which had released the appellant, must be given full faith and

credit in accordance with the United States Constitution. Hoy found that the present application had been decided by a court of competent jurisdiction and on the merits in Rhode Island. Id. at 982.

The Full Faith and Credit Clause specifically requires that full faith and credit be accorded a final judgment of a sister state court having jurisdiction of the parties and of the issues that were decided therein. A Florida court of competent jurisdiction heard and addressed the same issues and warrants as were before the courts in Nevada in Petitioner's latest challenge of his extradition to Arizona. Essentially, Arizona seeks to collaterally attack this prior valid final civil judgment rather than appeal its holding, a right which clearly existed in the Florida habeas corpus proceeding. The substance of Arizona's requisition application for extradition has not varied from its various prior attempts in Florida and

Texas to seize the Petitioner. Indeed, Arizona comes forth with not one scintilla of new evidence which could justify this fifth extradition attempt.

In short, the United States Constitution leaves no room for discretion, full faith and credit must be accorded the prior Florida decision. Extensive case law nationwide supports this point, as well as the law of Florida which had rendered the valid, final judgment on the merits. If this decision of the Nevada Supreme Court were allowed to stand, states would be able to perpetually arrest and re-arrest an alleged fugitive from justice until they obtain the desired finding that one is a fugitive of justice or coerce the alleged fugitive until he waives extradition to the demanding state; oppressed by continued confinement without bail and the costs of defending himself following five previous extradition proceedings. If Full Faith and Credit and/or res judicata effect must not be given to a

prior judgment and if one may not offer evidence as to presence in the demanding state or lack thereof, then the procedure for extradition habeas corpus review has no purpose other than wasting paper in total derogation to the constitutional rights of our citizenry, extraditee or not. If such is the case, then habeas corpus truly has become a tool of oppression as warned against by Messina, supra. This case must be decided on the merits as it is critical to the functioning of the criminal justice system and to avoid overt miscarriages of justice as in the instant case.

IV. THE FULL FAITH AND CREDIT CLAUSE IS AN INTEGRAL PART OF EXTRADITION AND RES JUDICATA IS AN INTEGRAL PART OF FULL FAITH AND CREDIT, THUS THE NEVADA SUPREME COURT ERRED IN HOLDING THAT NEITHER APPLIED TO INTERSTATE EXTRADITION.

Congress, acting in 1793 upon the authority of the U.S. Constitution, Full Faith and Credit Clause, Article IV, Section 1, and the Extradition Clause, Article IV, Section 2, cl. 2, had passed the Extradition Act (predecessor to 18 U.S.C. Section 3182), so stated this Court in Kentucky v. Dennison, 65 U.S. 66, (1861), which was overruled on other grounds by Puerto Rico v. Branstad, 107 S.Ct. 2802 (1987).

It is of interest to note that when a potential conflict between the extradition clause and some other constitutional provision has been recognized, this Court long ago held that the clause be interpreted so as to avoid the conflict. In Kentucky, supra, Chief Justice Taney, speaking for the Court, discussed the Extradition Clause's requirement that a person be "charged" with "treason, felony or other crime." He indicated that the general term "charged" should be construed in accord with the accepted constitutional

principles governing the roles of the judicial and executive departments. Chief Justice Taney concluded that the governor of the demanding state was not authorized by the Extradition Clause to demand the return of a fugitive unless the fugitive "was charged in the regular course of judicial proceedings." Id.

Over 100 years later this Court in Michigan v. Doran, supra, reiterated that the Extradition Clause articulates in mandatory language the concepts of comity and full faith and credit, as found in the immediately preceding clauses of Article IV, such as the Commerce Clause, were designed to serve important national objectives of unity and comity. Id. at 526, 527.

One of the primary goals of extradition is to promote the concept of comity and to preclude any fugitive from seeking sanctuary in a sister state by

applying the Full Faith and Credit Clause to a sister state's charging documents and requisition application for extradition. Thus, an asylum state will give full faith and credit to the laws (i.e. charging documents) of a demanding state in extradition. However, by analogy, Nevada cannot simply ignore the valid, final judgment of another sister state, such as Florida, and act in total disregard to the Full Faith and Credit Clause. It is an unequal protection of the laws for Nevada to justify extradition of the Petitioner by giving full faith and credit to Arizona' charging documents and subsequent rendition warrant, while ignoring the prior, final judgment of a Florida court of competent jurisdiction that Petitioner is not a fugitive of justice based upon these identical charging documents. It is abundantly clear that the Full Faith and Credit Clause is an integral part of the Extradition Clause, and that res judicata is an integral part of the Full Faith and

Credit Clause. The Petitioner has shown that Full Faith and Credit not only applies in interstate extradition, but that its very basis is found in the same constitutional Article IV. The Nevada courts' holdings to the contrary are in error and in total disregard to these constitutional provisions. This Writ of Certiorari must be granted to resolve these conflicting and independently important constitutional questions.

V. THE NEVADA COURTS ERRED IN REFUSING TO ACCEPT EVIDENCE OF FUGITIVITY.

Michigan v. Doran, supra, lists four factors which a court in an asylum state can review in an extradition challenge:

1. whether the extradition documents on their face are in order;

2. whether the Petitioner has been charged with a crime in the demanding state;

3. whether the Petitioner is the person named or wanted for extradition;

4. whether the petitioner is a fugitive of justice; Id. at 289.

Of the four factors, the most important determination is the finding of fact whether the petitioner is a fugitive of justice. The Nevada courts erred by refusing to allow the Petitioner to establish that he was not in the demanding state at the time of the alleged offense, i.e. was not a fugitive of justice. Nevada courts held that such evidence must be presented in the demanding state, rather than in the asylum state habeas proceedings. In an extradition case, the Governor, in the first instance must establish whether the accused is: a. substantially charged with a crime, and b. whether he is a fugitive of justice from the demanding state. Munsey v. Clough, 196 U.S. 364 (1905); Smith v. Idaho, 373 F.2d 149, cert. denied

87 S.Ct. 2139, 388 U.S. 919 (1967); McBride v. Soos, 594 F.2d 610 (10th Cir., 1979); Brown v. Nutsch, 619 F.2d 758 (C.A. Neb. 1980). The Ninth Circuit in Smith, supra, held that the court is essentially reviewing the factual determination of a governor as to the presence of the accused in the demanding state. U.S. Const., Article IV, Section 2, 18 U.S.C. Section 3182.

Without question, the Petitioner has been denied his due process rights under the Fifth Amendment, and well established case law, by barring him from establishing that he is not a fugitive of justice. Illinois ex Rel McNichols v. Pease, 207 U.S. 100 (1907); Hyatt v. New York, 188 U.S. 691, (1903); Doran, supra, Smith, supra, Ellison v. Splain, 261 F. 247 (C.A., D.C., 1919); Smith v. Elrod, 511 F.Supp. 559 (1981); Sanders v. Conine, 506 F.2d 530 (10th Cir., 1974);

The issue of presence in the demanding state at the time of the offense is always open to inquiry on habeas corpus. Doran, supra. In Smith, supra, the Ninth Circuit Court of Appeals held that the question of presence in the demanding state is the sole question on which evidence may be admitted at a habeas corpus hearing. In Galloway v. Josey, 502 S.2d 590, cert. denied 108 S.Ct. 1467, 99 L.Ed 2d 698 (1987), the Florida court held that "if the petitioner comes forward with clear and convincing evidence that he is not a fugitive, the burden then shifts to the state to produce competent evidence discrediting the petitioner's proof to such a degree that is ceases to be clear and convincing." It was against these standards that the Petitioner's case was decided in all the Florida proceedings. See also, Walton v. State, 98 Idaho 442, 566 P.2d 765 (1977). If all a state had to do was present a warrant or indictment to accomplish

extradition, then the procedural safeguards of habeas corpus and the factors of Doran are utterly meaningless. An indictment alone does not establish presence in the demanding state. Hyatt, supra, Moncrief v. Anderson, 342 F.2d 902 (1964). Nor can presence be established by "information and belief" affidavits. Smith, supra.

Fugitivity (the concept of presence or lack thereof in the demanding state) is the most basic and fundamental factual finding a reviewing court can make in an extradition challenge. Compton v. Alabama, 214 U.S. 1 (1909), Johnson v. Mathews, 182 F.2d 667 (1950); Smith, supra, Hyatt, supra. The Nevada courts have ignored the most basic principles of Doran, supra, a case upon which they relied extensively. Doran mandates that a finding of fact must be made to determine the question of fugitivity. In order to determine fugitivity, an evidentiary hearing

must be had in order to review the evidence in the Governor's warrant and then allow the alleged fugitive to show whether he was present in the demanding state or not, when one is charged as being present therein and fleeing as in the instant case. If he does so by clear and convincing evidence, as Petitioner did in the Florida proceedings, then the burden shifts to the State to produce competent evidence discrediting the petitioner's proof to such a degree that it ceases to be clear and convincing. If the State cannot discredit this evidence, then the petitioner has carried his burden that he is not a fugitive of justice and should then be discharged upon his writ of habeas corpus. Galloway, supra. To not allow this Petitioner to present evidence as to his presence or lack thereof is a gross injustice. In addition to other courts having already ruled that he is not a fugitive of justice, Arizona has presented no new evidence. The

Arizona requisitioning documents presented to Nevada are identical to the documents presented to Florida in earlier extradition attempts. Arizona cannot produce one shred of new evidence that Petitioner was in Arizona and thereafter fled as alleged in all prior extradition attempts. The Nevada courts erred in failing to discharge the Petitioner under the equitable principles of habeas corpus based on these grounds alone.

The Nevada courts did not follow or allow such an inquiry into fugitivity. These courts erred in deciding that the Florida proceedings, in which an evidentiary hearing on fugitivity was conducted and Petitioner proved he was not a fugitive of justice, went to the substantive case. Indeed, the decision in Castriotta, supra, creates a square conflict with the decisions of this Court, numerous courts of appeal, and the known decisions of every other state court of

last resort in the nation. Certiorari must be granted to clarify this Court's holding in Doran, supra, and to re-affirm an extraditees' right to offer evidence which will determine the issue of presence in the demanding state or lack thereof in extradition habeas corpus. Doran specifically provides that the factual question of fugitivity may be inquired into in challenging extradition. This being the case, findings of fact must be made and evidence must be received to make such a factual determination. The Nevada courts wrongfully determined that such an evidentiary hearing exceeded the permissible scope of review in extradition habeas corpus under the mandates of Doran.

VI. THE NEVADA SUPREME COURT RELIED UPON INVALID PRECEDENT TO DENY MEANINGFUL REVIEW OF PETITIONER'S ARIZONA TRIAL AND CONVICTION IN ABSENTIA.

The record in this case explicitly shows that Arizona seeks to return Petitioner not for trial, as alleged, but rather to a verdict of guilty by jury. The State of Arizona had conducted a sham trial in absentia, without notice, and based on the Petitioner's involuntary absence. ROA Vol. 2, pg. 395.

This Honorable Court must grant this Writ of Certiorari if for no other reason than to decide if the unanimous opinion in Crosby v. United States, 113 S.Ct. 748 (1993)-which ruled in the context of Fed. Rules of Criminal Procedure Rule 43- and the Sixth Amendment will bar the states from convicting defendants in their absence. Of note, in the arena of international extradition, the United States Department

of State (the executive authority in international extradition) will not honor a foreign demand to a conviction in absentia absent official certification that the extraditee will be afforded a de-novo trial upon his return. Indeed, it can be said that the Uniform Extradition Act and 18 U.S.C. Section 3182 don't speak to this in that the drafters never foresaw that individuals could be extradited interstate based upon guilty verdicts from trials in absentia.

The case law relied upon by the Nevada Supreme Court to deny review of Petitioner's trial in absentia finds its basis in this Court's opinion of Sweeney v. Woodall, 355 U.S. 188 (1952). In Sweeney, this Court held that inasmuch as habeas corpus lies only in the district of a petitioner's incarceration, an asylum state would have no jurisdiction to review issues regarding the demanding authorities.

This Court's reasoning was that the asylum state forum would not have jurisdiction over the demanding authorities to effectuate its orders. However, in Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973), this Court overruled Ahrens, supra, by holding that the jurisdiction of a court considering a habeas corpus petition requires only that the court issuing the writ have jurisdiction over the custodian of the prisoner.

Furthermore, in In re Hunt, 276 F. Supp. 112 (1967) and State of Arizona v. Hunt, 408 F.2d 1086 (1968), the District Court of Michigan held that an extraditee would not be returned to Arizona absent certification that she would be afforded a de-novo trial. In State of Arizona v. Hunt, the court made several findings of fact which are clearly distinguishable from the instant case. The most important distinction is that Hunt had been present at a first trial in Arizona and

jeopardy had attached, unlike the instant case where the Petitioner was without notice and involuntarily absent from the trial proceedings.

The Nevada Supreme Court opinion is void of any reference to Hunt. It would be an unequal protection of the laws to allow this Nevada decision to stand in that our national policy is to refuse to extradite individuals to foreign countries where they have been tried in absentia absent a guarantee of a new trial. The same protections must be afforded to the Petitioner facing interstate extradition to a verdict of guilty after a trial in absentia. Each individual state has an obligation under the Fourteenth Amendment to uphold the Constitution. The Nevada Courts under Braden, supra, had the constitutional authority to address the Petitioner's trial in absentia and apply constitutional safeguards as a condition of his surrender.

SUMMARY OF REASONS FOR GRANTING THIS WRIT OF CERTIORARI

In as much that extradition is governed by the U. S. Constitution Article IV, Section 2, clause 2, and 18 U.S.C. Section 3182, and the congressionally sanctioned Uniform Criminal Extradition Act, all questions presented herein are federal questions.

Further, it is well settled by this Court that state courts must administer extradition law in accordance with the mandates of the U.S. Constitution and the case law from the United States Supreme Court. State of North Carolina v. Bailey, 289 U.S. 412 (1933).

The Supreme Court of the State of Nevada has decided these important federal questions in a way that conflicts with all applicable decisions of this Court as it relates to the permissible scope of review in

extradition habeas corpus on the issue of fugitivity (presence or lack thereof in the demanding state). In holding that such an inquiry into presence or lack thereof in the demanding state is not permissible in the asylum state, the Nevada Supreme Court has ignored obvious precedent. This decision not only conflicts with every holding by this Court in over 100 years of jurisprudence, but creates a square conflict with every other state's highest court rulings in the nation.

Further, the Nevada Supreme Court's holding in this case that res judicata was inapplicable in interstate extradition is in square conflict with the holdings in various other states' highest courts of appeal and in total derogation to this Court's stance on the general principles of issue and claim preclusion and on Full Faith and Credit.

This Court should also consider the granting of

certiorari upon its own holding that this Court is the final arbiter of res judicata issues. Williams v. State of North Carolina, 317 U.S. 287, at 302 (19); Morris v. Jones, supra. Additionally, as the Florida orders of discharge and the Nevada Supreme Court opinion clearly reflect, this is a case about law, as the facts are not in dispute.

This Court should consider that in most jurisdictions, including Nevada, an extraditee is held without bail, which is a strong deterrent to litigation of these important federal issues. Indeed, it is unlikely that this Court will soon again have the opportunity to pass upon these issues, and especially upon the record of this highly and properly litigated case. This decision is critical to the functioning of the criminal justice system, especially as to extradition law. Furthermore, to allow this Nevada decision to stand will create a square conflict as to issue and claim

preclusion in the context of extradition habeas corpus.

The Nevada courts have set forth a decision which denies the Petitioner and subsequent extraditees the right to present evidence as to presence in the demanding state or lack thereof (fugitivity). This holding, if allowed to stand, ignores case law of this Supreme Court and creates a further square conflict amongst the states. For the foregoing reasons it is respectfully requested that this Honorable Court grant certiorari to review the issues presented by this important petition, or, inasmuch as that the facts are not in dispute, enter an Order of summary

disposition on the merits.

DATED this 24 day of April, 1995.

PAUL DAVID FINI CASTRIOTTA
IN PRO SE
Clark County Detention Center
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OF COUNSEL TO PETITIONER

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

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PAUL DAVID FINI CASTRIOTTA,

Petitioner

v.

THE STATE OF NEVADA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

PETITIONER'S APPENDIX

Exhibit A: Nevada Supreme Court Opinion

Exhibit B: Order on Petitioner's Motion for Rehearing

Exhibit C: Second Florida Order

Exhibit D: Nevada state Court Order for extradition of Petitioner

EXHIBIT A

111 Nev. Advance Opinion 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL DAVID CASTRIOTTA, Appellant v. THE STATE OF NEVADA, Respondent.

No. 26057

January 25, 1995

Appeal from an order denying a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy A. Becker, Judge.

Affirmed.

Kirk T. Kennedy, Las Vegas, for Appellant.

Frankie Sue Del Pappa, Attorney General, Carson City; Rex Bell, District Attorney, James Tufteland, Chief Deputy District Attorney, and Frank J. Coumou, District Attorney, Clark County, for Respondent.

OPINION

Per Curiam:

Appellant Paul David Castriotta ("Paul") was

arrested in Florida as a fugitive from justice based on outstanding warrants in Arizona. After Arizona demanded that Florida extradite Paul, he filed a petition for writ of habeas corpus arguing that Arizona's requisitioning documents, on their face, were not in order and that he was not a fugitive of justice. The Florida court agreed and released Paul.

Paul was subsequently arrested in Las Vegas on June 16, 1994, based on the same Arizona warrants. The State of Arizona demanded that Nevada extradite Paul. Governor Miller issued an executive warrant commanding the Nevada authorities to detain Paul so that he could be extradited. Paul filed a petition for a writ of habeas corpus contesting extradition to Arizona. The district court denied Paul's petition. Paul appeals, arguing that (1) the principle of res judicata mandates that Florida's judgment is binding as to the conclusion that Paul is not a fugitive from justice, (2) Nevada and Arizona acted in bad

faith, and (3) Arizona convicted Paul in absentia.

We conclude that an extradition proceeding is not res judicata as to subsequent proceedings. See Stone v. State, 85 Nev. 60, 450 P.2d 136 (1969); In re Russell, 524 P.2d 1295 (Cal. 1974).

We also conclude that neither Nevada nor Arizona acted in bad faith. Michigan v. Doran, 439 U.S. 282 (1978), states,

> Once the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.

Id. at 289.

The district court did not exceed the scope of its authority as outlined in Doran. Paul argues that the district court did not allow evidence of "fugitivity."[1] The

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Specifically, Paul argues that the district court did not consider two affidavits and a visa showing that he was

district court, however, viewed amply evidence to determine that Paul was a fugitive from justice as defined in Ex parte Lorraine, 16 Nev. 63 (1881).[2] Paul's other arguments as to the bad faith of Nevada and Arizona have been considered and are without merit.

Finally, we conclude that whether Paul was convicted in absentia cannot be resolved during extradition proceedings. In Sheriff v. Randono, 89 Nev. 521 , 515 P.2d 12667 (1973), this court held that an asylum state simply cannot determine whether

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not in Arizona at the time the alleged crimes were committed. The district court correctly concluded that this evidence should be raised before the courts in Arizona.

[2]In order to determine if a person is a fugitive from justice, the court should find that (1) a crime has been committed in another state, (2) the accused has been charged in that state with the commission of such crime, and (3) the accused fled from the jurisdiction and is within this state. Ex parte Lorraine, 16 Nev. at 63. Although Ex parte Lorraine was decided under the previous statue, it is clearly in accord with the current statute-NRS 179.181.

there is a potential violation of petitioner's constitutional rights if he is extradited. Id. at 523, 515 P.2d at 1268; see Lucas V. Sheriff, 86 Nev. 159, 466 P.2d 659 (1970) (a petitioner's claim that extradition would violate the right not to be put in jeopardy twice for the same offenses is an issue to be decided by the courts of the demanding state); Martinez v. Sheriff, 90 Nev. 371, 373, 527 P.2d 1200, 1200-01 (1974) (a court in the asylum state cannot look into the efficacy of the indictment in the demanding state). Therefore, we conclude that the contention that Paul has already been convicted in absentia should more properly be raised before the courts in Arizona. See Randono, 89 Nev. at 523, 515 P.2d at 1269.

In view of the foregoing, we conclude that Paul's appeal lacks merit. Accordingly, we affirm the order of the district court.

Steffen, C.J.
Young, J.
Springer, J.

Shearing, J.
Rose, J.

EXHIBIT B

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY, FLORIDA

CASE NO. CRC 93-000701-CI

PAUL DAVID CASTRIOTTA,
a/k/a ROBLEY ROBINSON

Petitioner,

vs.

EVERRETT S. RICE, as Sheriff of Pinellas County, Florida,

Respondent.

ORDER ON PETITIONER'S MOTION FOR REHEARING

THIS CAUSE coming on to be heard on Petitioner's Motion for Rehearing, and the Court having heard argument of Counsel for Petitioner and Counsel for the State of Florida, and the Court finding that it had previously entered an Order and an Amended Order denying the Petition For Writ of Habeas Corpus, hereby:

ORDERS that the Motion for Rehearing be and the same is, GRANTED, and the Court further finds upon rehearing, as follows:

1. That the requisitioning documents in CRC 99-57653 CFANO-J are not on their face in order, and further:

2. That Petitioner is not a fugitive from justice. It is therefore:

ORDERED that Petitioner PAUL DAVID CASTRIOTTA a/k/a ROBLEY ROBINSON's Petition for Writ of Habeas Corpus, be and the same is, GRANTED, and it is further:

ORDERED that PAUL DAVID CASTRIOTTA, a/k/a ROBLEY ROBINSON, be released from the Pinellas County Jail on Arizona extradition Case No CRC 99-57653 CRANO-J instanter.

DONE AND ORDERED, in Chambers, at

Clearwater, Pinellas County, Florida, this 5th day of April, 1993.

/s/
Circuit Judge

EXHIBIT C

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY CRIMINAL JUSTICE DIVISION

State of Florida,

vs.

Paul David Castriotta,
also known as
Robley Robinson,
Defendant.

Case No: CRC 92-16027 CFANO-I,
93-0702-CI,
99-57653, 99-60551,
99-60555

ORDER

THIS COURT having read counsel' submissions and heard counsel's arguments;

It is hereby ORDERED AND ADJUDGED:

1. That the Defendant's motion for reinstatement of bond as to case number 92-16027 is denied without prejudice to file and argue this motion in front of the Honorable Claire K. Luten.

2. As to case number 99-57653 the Defendant is released instanter. Any bond previously set in this matter is withdrawn. Any hold placed on the

Defendant for this case shall be removed from the criminal information system.

3. As to case number 93-0702 this court has already ruled on this case and no other action is ordered. The court's previous ruling as to case number 93-0702 remains in full force and effect.

4. As to case number 99-60551, the Defendant is released instanter. Any bond set previously on this case is withdrawn as the District Attorney in Dallas County, Texas has dismissed these charges.

5. As to case number 99-60555, the Defendant's bond is set at $10,000.00. The court's previous orders setting the bond on this case at $5,000.00 and revoking this bond and setting the bond at $50,000.00 are hereby withdrawn.

6. It is a condition of the bond in case number 99-60551 that the Defendant not leave the jurisdiction of this court.

7. This court declines to rule at this time on

whether the Defendant's incarceration in Orange County, Florida amounted to a surrender. The Defendant may bring this issue up again at a later time.

DONE AND ORDERED in open court on the 30th day of November, 1993 and signed in chambers on the 31st day of December, 1993.

/S/

Honorable Brandt Downey,
Circuit Court Judge

EXHIBIT D

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Extradition	) Case No: C121003
	) Dept. No: "II" "D"
of	) ORDER
	)
PAUL DAVID CASTRIOTTA	)
ID# 1209225	)
AKA DANIEL SAMPSON AKA	)
JOHNE WAYDE JAY AKA	)
JONATHAN JAY AKA JAYSON	)
SWAN AKA JASON SHAW	)
_____	)

The above entitled matter having come on for hearing on the 2nd of September, 1994, on the Petition of REX BELL, Clark County District Attorney and Ben Graham, Deputy District Attorney, appearing for Petitioner, and PAUL DAVID CASTRIOTTA AKA DANIEL SAMPSON AKA JOHNE WAYDE JAY AKA JONATHAN JAY AKA JAYSON SWAN AKA JASON

SHAW being present, and the Court having considered the Petition and Executive Warrant attached thereto, and having heard arguments of counsel; and it appearing that the said PAUL DAVID CASTRIOTTA AKA DANIEL SAMPSON AKA JOHNE WAYDE JAY AKA JONATHAN JAY AKA JAYSON SWAN AKA JASON SHAW is being held pursuant to a duly executed Governor's Warrant commanding the Nevada authorities to detain the said PAUL DAVID CASTRIOTTA AKA DANIEL SAMPSON AKA JOHNE WAYDE JAY AKA JONATHAN JAY AKA JAYSON SWAN AKA JASON SHAW for the purpose of his being delivered to authorities from the State of Arizona.

IT IS THEREFORE ORDERED that PAUL DAVID CASTRIOTTA AKA DANIEL SAMPSON AKA JOHNE WAYDE JAY AKA JONATHAN JAY AKA JAYSON SWAN AKA JASON SHAW shall be remanded to the custody of the Las Vegas

Metropolitan Police Department, to be held for the purpose of being turned over to the duly authorized agents of the State of Arizona.

IT IS FURTHER ORDERED that immediate notice be given to the agents of the State of Arizona and upon their presenting credentials, the said PAUL DAVID CASTRIOTTA AKA DANIEL SAMPSON AKA JOHNE WAYDE JAY AKA JONATHAN JAY AKA JAYSON SWAN AKA JASON SHAW be released to them.

DATED and done in Open Court this 2ND day of SEPTEMBER, 1994.

/S/

_____
DISTRICT JUDGE

REX BELL
DISTRICT ATTORNEY

/S/

By:_____
Deputy District Attorney

Supreme Court, U.S.
FILED
JUN 9 1995
OFFICE OF THE CLERK

(2)

No. 94-1853

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

PAUL DAVID FINI CASTRIOTTA, *Petitioner,*

v.

THE STATE OF NEVADA, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENT'S BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

QUESTION PRESENTED

1. Does the Full Faith and Credit Clause of the United States Constitution require that a sister state give res judicata effect to prior extradition proceedings?

2. Did the Nevada district court properly apply this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978)?

3. Was the Supreme Court of the State of Nevada required to determine whether the Petitioner was tried in absentia?

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No. 94-1853

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

PAUL DAVID FINI CASTRIOTTA, *Petitioner,*

v.

THE STATE OF NEVADA, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, the State of Nevada, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Nevada Supreme Court opinion in this case. That opinion is reported at 888 P.2d 927 (Nev. 1995).

STATEMENT

On October 10, 1992, the Petitioner, Paul David Fini Castriotta, was arrested in Florida as a fugitive from justice

based upon outstanding warrants from Arizona. Arizona demanded that the Petitioner be extradited back to that state. The Petitioner then filed a petition for a writ of habeas corpus arguing that Arizona's requisitioning documents were not in order and that he was not a fugitive from justice. The Florida court agreed and the Petitioner was released.

Based upon the same Arizona warrants, the Petitioner was subsequently arrested in Las Vegas, Nevada, on June 16, 1994. Arizona, again, demanded that the Petitioner be extradited back to that state and he, again, filed a petition for a writ of habeas corpus. However, the Nevada district court denied the petition.

The Petitioner then appealed this ruling to the Supreme Court of the State of Nevada, arguing that (1) the principle of res judicata required the Nevada court to give conclusive effect to the Florida court's finding that the Petitioner was not a fugitive from justice; (2) Nevada and Arizona acted in bad faith; and (3) the Petitioner was convicted in Arizona in absentia.

As to these issues, the Nevada Supreme Court concluded that extradition proceedings do not carry res judicata effect.

Castriotta v. State, 888 P.2d 927, 928 (Nev. 1995). It was also concluded that Nevada and Arizona did not act in bad faith and that the Nevada district court properly applied this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978). *Id.* at 928-29. Specifically, the Nevada Supreme Court determined that the Nevada district court properly declined consideration of evidence showing that the Petitioner was not in Arizona when the crimes charged were committed. *Id.* at 928 n.1. Finally, the Nevada Supreme Court refused to reach the issue of whether the Petitioner was tried in absentia, concluding that that issue was best raised before the courts of Arizona. *Id.* at 929.

REASONS WHY THE PETITION SHOULD BE DENIED

The Petitioner presents six constitutional issues he claims were raised by way of the decision of the Supreme Court of the State of Nevada. (Pet. at ii-iv.) In fact, only three of the cited issues raised by that court's opinion are properly presented by the Petitioner. Moreover, the decision of the Nevada Supreme Court was sound, leaving no constitutional infirmities for this

Honorable Court to cure.

I

ONLY THREE OF THE SIX QUESTIONS PRESENTED ARE PROPERLY RAISED BY THE PETITIONER

The Petitioner states as his first question presented whether a sister state must give full faith and credit to a final judgment in a habeas corpus action in which it was decided that the Petitioner was not a fugitive from justice. (Pet. at ii.) The second question presented is whether the Nevada Supreme Court erred in refusing to give res judicata effect to the prior Florida court ruling in which it was determined that the Petitioner was not a fugitive from justice. (Pet. at ii.) Since the doctrine of res judicata is predicated upon the Full Faith and Credit Clause, *see Durfee v. Duke*, 375 U.S. 106, 109 (1968) ("Full faith and credit . . . generally requires every State to give a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it."), the Petitioner has essentially stated the same issue in two different ways. As such, the State will

address in this Brief in Opposition the single issue of whether the Full Faith and Credit Clause of the United States Constitution requires that a sister state give res judicata effect to prior extradition proceedings.

As his third issue, the Petitioner asks whether a demanding state is barred from issuing additional requisition applications by virtue of the doctrine of res judicata once a court determines that the detainee is not a fugitive from justice. (Pet. at ii-iii.) His fourth issue is whether the Petitioner's right to interstate travel was violated by information placed in the National Crime Information Center computer. (Pet. at iii.) The Nevada court decided that the Petitioner's "other arguments as to the bad faith of Nevada and Arizona have been considered and are without merit." *Castriotta*, 888 P.2d at 929. Because of this cursory determination, these issues were not sufficiently ruled upon in the opinion of the Nevada Supreme Court to warrant discussion here. *Cf. New York v. Uplinger*, 467 U.S. 246, 248-49 (1984) (dismissing improvidently granted writ of certiorari, in part, because the opinion of the lower court was "fairly

subject to varying interpretations, leaving us uncertain as to the precise federal constitutional issue the court decided." (footnote omitted)). Consequently, this Court cannot now consider these issues.

As his fifth question presented, the Petitioner states the valid issue of whether the Nevada district court properly applied this Court's holding in *Michigan v. Doran*, 439 U.S. 282 (1978). (Pet. at iii.)

Finally, the Petitioner asks this Court to find error with the Supreme Court of the State of Nevada in declining to determine whether he was tried in absentia. (Pet. at iii-iv.)

II

THE FULL FAITH AND CREDIT CLAUSE DOES NOT REQUIRE THAT EXTRADITION PROCEEDINGS BE GIVEN RES JUDICATA EFFECT

In its opinion, the Nevada Supreme Court held that extradition proceedings are not entitled to res judicata effect. *Castriotta*, 888 P.2d at 928. The issue of whether extradition proceedings carry res judicata effect was addressed by this Court

many years ago. In *Collins v. Loisel*, 262 U.S. 426, 427 (1923), the petitioner tried to prevent his extradition to British India through habeas petitions. He was charged with three counts of obtaining property by false pretenses as to three different victims. *See id.* Relief was denied as to one court, but the district court discharged the petitioner as to the other two counts since the prosecution on those counts had been abandoned and new charges had been filed. *Id.* at 427-28.

While the petitioner was being held for the charge in count one, affidavits with regard to the other two counts were again filed and the petitioner was again held to await extradition. *Id.* at 428. However, a warrant of extradition was not issued since the proceedings as to the first count were still in progress. *Id.* Finally, a third set of affidavits for the other two charges were filed against the petitioner. *Id.* These affidavits were in form and substance identical to those which had been previously dismissed. *Id.* After an unsuccessful motion to quash these charges and a failed bid at habeas corpus relief, the petitioner appealed to this Court.

The petitioner argued that since the original order of extradition had been discharged on habeas corpus, the new set of affidavits recharging the two other counts were barred by the doctrine of res judicata. *Id.* This Court concluded, however, that a "fugitive from justice may be arrested in extradition proceedings a second time upon a new complaint charging the same crime, where he was discharged by the magistrate on the first complaint or the complaint was withdrawn." *Id.* at 429 (footnote omitted). It also held that "[t]he discharge of [the petitioner] on the first petition . . . does not operate as res judicata. *Id.* at 430. The Court continued, "the judgment is res judicata only that [the petitioner] was *at the time* illegally in custody, and of the issues of law and fact necessarily involved in that result." *Id.* (emphasis added) (footnote omitted). Finally, the Court elaborated on its reasoning:

> The discharge here in question did not go to the right to have [the petitioner] held for extradition. It was granted because the proceedings on which he was then held had been irregular and the British consul general, instead of undertaking to correct them, had concluded to abandon them, and to file anew by another set of affidavits.

Id.

More than fifty years later, in *Hooker v. Klein*, 573 F.2d 1360 (9th Cir. 1978). *cert. denied*, 439 U.S. 932 (1978), the Ninth Circuit considered the analysis in *Collins*. Focusing on the passage just quoted, that court found that the "seeming limitation on the Court's holding leaves unsettled the question of whether an original denial of extradition *on the merits* should have any effect on subsequent extradition proceedings on the same charges." *Id.* at 1366 (emphasis added) (footnote omitted). The court then undertook an extensive analysis of the applicability of the doctrine of res judicata in extradition proceedings.

The Ninth Circuit first set forth the necessary elements for the application of res judicata: (1) a valid, final judgment; (2) on the merits; (3) a subsequent proceeding involving the same parties or those in privity with them; and (4) based upon the same cause of action or claim. *Id.* at 1367.

Then, the court determined that extradition proceedings defy easy classification in that "[t]he function of an extraditing court is not to decide the guilt or innocence of the fugitive at

law, but rather to determine whether there is 'competent legal evidence which . . . would justify his apprehension and commitment for trial if the crime had been committed in [the forum] state.'" *Id.* (quoting *Collins v. Loisel*, 259 U.S. 309, 315 (1922) (modification in *Hooker*). The court also reasoned that the finding of extradition marks the start, not the conclusion, of the determination of the fugitive's guilt or innocence. *Id.* The determination of extradition is an interlocutory order similar to a preliminary hearing on criminal charges. *Id.* Since the extraditing court does not rule on the guilt or innocence of the fugitive, it could not be said that an order of extradition constitutes a final judgment for res judicata purposes. *Id.* at 1367-68.

Nor is an extradition proceeding decided "on the merits." The merits of a fugitive's guilt or innocence are not explored. *Id.* at 1368. The extraditing court is only to consider whether there is sufficient evidence to justify the extradition of the fugitive. *Id.* There are, likewise, limitations as to the evidence allowed. *See id.* (citing *Charlton v. Kelly*, 229 U.S. 447, 456

(1913)). As such, an order of extradition does not entail a consideration of all the merits of the case. *Id.*

The Ninth Circuit, building on *Collins*, concluded that "it is wholly inappropriate to apply res judicata concepts to the findings resulting from extradition proceedings." *Id.* This was precisely the holding of the Supreme Court of the State of Nevada. *Cf. Castriotta*, 888 P.2d at 928 (citing *Stone v. State*, 450 P.2d 136 (Nev. 1969); *In re Russell*, 524 P.2d 1295 (Cal. 1974)) ("We conclude that an extradition proceeding is not res judicata as to subsequent proceedings."). Indeed, no error can be found with this conclusion.

III

THE NEVADA DISTRICT COURT PROPERLY APPLIED THIS COURT'S HOLDING IN *MICHIGAN V. DORAN*

In *Michigan v. Doran*, 439 U.S. 282, 289 (1979), this Court limited permissible inquiry in habeas corpus proceedings when challenging extradition to four issues: (1) whether the extradition documents are in order; (2) whether the petitioner is

charged with a crime in the demanding state; (3) whether the person named in the extradition documents is in fact the petitioner; and (4) whether the petitioner is a fugitive.

The Petitioner argues that the courts of Nevada did not allow him to prove that he was not a fugitive. Specifically, he argues that the Nevada district court would not consider evidence showing that he was absent from Arizona when the crimes with which he was charged were committed. (Pet. at 8-9, 48.) The Nevada Supreme Court concluded that this evidence was properly raised before the courts of Arizona. *Castriotta*, 888 P.2d at 928. It was also concluded that the Nevada district court heard ample evidence showing that the Petitioner was a fugitive from justice. *Id.* at 928-29.

To be regarded as a fugitive from justice, it must be shown that a person committed an act in a state which, under its laws, is a crime, and then departed from its jurisdiction and, when sought to be prosecuted, was found in another state. *Hogan v. O'Neill*, 255 U.S. 52, 56 (1921) (citing *Biddinger v. Commissioner of Police*, 245 U.S. 128, 133 (1917); *McNichols*

v. Pease, 207 U.S. 100, 108 (1907); *Appleyard v. Massachusetts*, 203 U.S. 222, 228 (1906); *Munsey v. Clough*, 196 U.S. 364, 372-75 (1905); *Roberts v. Reiley*, 116 U.S. 80, 95-97 (1885)). The evidence the Petitioner sought to have admitted was irrelevant as to this inquiry.

In putting forth evidence tending to show that he was not in Arizona when the crimes were committed, the Petitioner sought to demonstrate his ultimate innocence. As this Court has made clear, "extradition proceedings are 'to be kept within narrow bounds'; they are 'emphatically' not the appropriate time or place for entertaining defenses or determining the guilt or innocence of the charged party." *California v. Superior Court*, 482 U.S. 400, 407-08 (1987) (quoting *Biddinger*, 245 U.S. at 135) (additional citations omitted). The Court continued: "Those inquiries are left to the prosecutorial authorities and courts of the demanding State . . . ." *Id.* at 408 (citations omitted). Consequently, no error can be found in the opinion of the Nevada Supreme Court.

IV

THE NEVADA SUPREME COURT WAS NOT REQUIRED TO DETERMINE WHETHER THE PETITIONER WAS TRIED IN ABSENTIA

In its opinion, the Nevada court concluded "that the contention that [the Petitioner] has already been convicted in absentia should more properly be raised before the courts of Arizona." *Castriotta*, 888 P.2d at 929 (citation omitted). The gravamen of the Petitioner's argument is that this Court's overruling of *Ahrens v. Clark*, 335 U.S. 188 (1948), in *Braden v. Circuit Court*, 410 U.S. 484 (1973), invalidates such action. (Pet. at 55-57.) However, there is no basis for this conclusion.

In this case, the decision of the Supreme Court of the State of Nevada was premised upon three prior Nevada precedents: *Martinez v. Sheriff*, 527 P.2d 1200, 1200-01 (Nev. 1974) (an asylum state cannot inquire into the efficacy of the indictment in the demanding state); *Sheriff v. Randono*, 515 P.2d 1267, 1268 (Nev. 1973), *cert. denied*, 416 U.S. 956 (1974) (a trial judge is not required to anticipate a potential constitutional

violation resulting from extradition of a fugitive to a demanding state); and *Lucas v. Sheriff*, 466 P.2d 659, 660 (Nev. 1970) (the question of whether returning a fugitive to the demanding state would result in a trial violative of his right against double jeopardy was best decided by the courts of the demanding state). This line of reasoning is not even remotely that used by this Court in overruling *Ahrens*.

Ahrens held that habeas corpus petitions could be brought only in the district of the petitioner's confinement. *Ahrens*, 335 U.S. at 191-93. It is true that *Ahrens* was subsequently overruled. *See Braden v. Circuit Court*, 410 U.S. at 500-01 (". . . we can no longer view [*Ahrens*] as establishing an inflexible jurisdictional rule, dictating the choice of an inconvenient forum even in a class of cases which could not have been foreseen at the time of our decision."). However, this reasoning has no place in the discussion of the present case. The petition giving rise to this action was brought in Nevada, the place of the Petitioner's confinement, making *Ahrens* and *Braden* wholly irrelevant. In addition, the Nevada court did not

determine that it was without jurisdiction to hear the petition. The present action is evidence of that fact. The Nevada court rather determined that the courts of Arizona provided a more suitable venue to pursue the trial-in-absentia claim. As such, no error can be assigned to the decision of the Supreme Court of the State of Nevada.

The Petitioner asks that his petition be granted "if for no other reason" (Pet. at 55) than to remedy his alleged trial in absentia. On the contrary, this Court has long ago held that a writ of certiorari will not issue upon a claim for which an adequate remedy otherwise exists. *In re Tampa Suburban R.R.*, 168 U.S. 583, 588 (1897). In this case, the Petitioner is surely able to pursue this alleged constitutional infirmity in the courts of Arizona. It would also appear, consistent with this Court's holding in *Michigan v. Doran*, 439 U.S. at 289, limiting those issues properly considered by an extraditing state, that this issue *must* be pursued in Arizona.

Finally, consistent with Sup. Ct. R. 15.1 in addressing misstatements of fact, the Respondent notes that the Petitioner

was charged with several additional crimes in Arizona though he does not make reference to these charges in his petition. The Petitioner was charged with fraudulent scheme and artifice in Case No. CR-18937. He failed to appear and was then further charged with theft of a credit card, theft by control and burglary in the second degree. He is also charged with fraudulent scheme and artifice and theft of a credit card in Case No. CR-19973. Though the record is unclear, it seems certain that the Petitioner was not tried in absentia for all of the charges associated with Case No. CR-18937 and never tried in Case No. CR-19973. Assuming, *arguendo*, that the Petitioner was tried in absentia as to some of the charges against him, this potential infirmity does not exist with regard to the host of other charges pending against him.

CONCLUSION

Indeed, the Nevada Supreme Court unquestionably applied the correct rules of law and did not unquestionably err. This is, precisely, the type of case in which this Court is *most*

inclined to deny certiorari. *See Kyles v. Whitley*, — U.S. —, 115 S. Ct. 1555, 1578 (1995) (Scalia, J., dissenting) (emphasis in original). For these reasons, the Petition for Writ of Certiorari should be denied.

Dated June 7, 1995.

Respectfully submitted,

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No. 94-1853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

Supreme Court, U.S.
FILED
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PAUL DAVID FINI CASTRIOTTA,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

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Dated: August 30, 1994

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 94-1853

PAUL DAVID FINI CASTRIOTTA,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

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REPLY BRIEF OF PETITIONER

INTRODUCTION

The petition for writ of *certiorari* was prepared by petitioner *pro se*. After the petition was filed and the State filed a response, petitioner sought to retain the undersigned counsel of record, who agreed to prepare this reply brief *pro bono publico* because this case meets the traditional criteria for a writ of *certiorari* and the facts reveal a miscarriage of justice.

Respondent does not dispute the material facts set forth in the petition. Those undisputed facts present at least two important issues of federal law on which the lower courts are divided: (1) Is one State's determination in an extradition proceeding that a person is not a fugitive from justice entitled to full faith and credit in a subsequent extradition proceeding brought in another State?, and (2) Does the alleged fugitive have the right to present evidence at an extradition hearing that he was not in the demanding State at the time of the alleged

offense? The opinion below not only deepened the split of authority on these two questions, but incorrectly and unfairly answered both questions against petitioner.

I. THE NEVADA SUPREME COURT ERRED BY REFUSING TO GIVE FULL FAITH AND CREDIT TO THE FLORIDA JUDGMENT THAT PETITIONER WAS NOT A FUGITIVE FROM JUSTICE, EXACERBATING A SPLIT IN AUTHORITY IN THE LOWER COURTS.

After a full evidentiary hearing, a Florida trial court determined that petitioner was not a fugitive from justice, based on evidence presented by petitioner that he was not in Arizona on the dates of the offenses alleged in the underlying indictments. (Reply Br. App. 1a-2a). Under Florida law, that determination is entitled to (and was given in this case) res judicata effect.

As explained in the petition for *certiorari*, the full faith and credit analysis in this case is straightforward. Nevada must afford the Florida judgment at least the same res judicata effect to which it would be entitled in Florida. *See, e.g.*, 28 U.S.C. § 1738 (1988); *Durfee v. Duke*, 375 U.S. 106, 109 (1963). Florida law gives res judicata effect to a judgment in an extradition proceeding finding that a particular person is not a fugitive from justice. *See, e.g., Stack v. State*, 333 So.2d 509 (Fla. App. 1976); *Crane v. Hayes*, 253 So.2d 435 (Fla. 1971). Therefore, Nevada was constitutionally required to give full faith and credit to the prior Florida judgment finding that petitioner could not be extradited to Arizona because he was not a fugitive—just as the Florida courts had previously dismissed Arizona's successive extradition attempts in Florida based on the same warrants.

Respondent does not, and cannot, contest the proposition that the Florida courts would deny Arizona's current extradition request as res judicata. Rather, respondent simply reiterates the novel theory that it successfully advanced below: that judgments in extradition proceedings, as a class,

are *per se* not entitled to res judicata effect or, consequently, full faith and credit. *See* Opp. Br. at 6 ("In its opinion, the Nevada Supreme Court held that extradition proceedings are not entitled to res judicata effect.") (citing *Castriotta*, 888 P.2d at 928). According to respondent and the Nevada Supreme Court, Florida law is *irrelevant* in determining the preclusive effect in Nevada of the prior Florida extradition proceedings: indeed, neither respondent nor the court below made even cursory reference to Florida law. Ordinary full faith and credit principles, under Nevada's view, are trumped by a substantive federal common-law rule that extradition proceedings cannot operate as res judicata.

That theory has no basis in principle or this Court's precedents. Respondent purports to base it on this Court's decision in *Collins v. Loisel*, 262 U.S. 426 (1923). That case, however, established nothing remotely of the kind—it simply held that an international extradition proceeding was not barred by an earlier such proceeding dismissed because of procedural irregularities. 262 U.S. at 430. The point of *Loisel* is not that, as a matter of federal common law, extradition proceedings *per se* cannot operate as res judicata, but simply that a federal extradition proceeding dismissed on a technicality will not bar a subsequent federal extradition proceeding on the merits. *Loisel* certainly does not stand for the proposition that *States* cannot apply ordinary rules of res judicata to their own interstate extradition proceedings or that other States are free to deny such proceedings full faith and credit.[1] Indeed, if anything, *Loisel* stands for the proposition that federal

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[1] Thus, respondents' reliance on *Hooker v. Klein*, 573 F.2d 1360 (9th Cir.), *cert. denied*, 439 U.S. 932 (1978), is also misplaced. There, as in *Loisel*, the question was whether—as a matter of *federal* law—an initial international extradition proceeding was entitled to res judicata effect in a subsequent international extradition proceeding. *Hooker* in no way suggests that *States* may not determine the res judicata effect of their own extradition proceedings, or that the ordinary principles of full faith and credit do not apply in the *interstate* extradition context.

extradition proceedings *do* have res judicata effect with respect to "the issues of law and fact necessarily involved in that result." 262 U.S. at 430 & n.2. *See also Chambers v. Cox*, 400 U.S. 870, 871 (1970) (Brennan, J., dissenting from denial of *certiorari*).

The Nevada Supreme Court's refusal to afford full faith and credit to the Florida judgment that petitioner is not a fugitive from Arizona is not only wrong, but exacerbates a split among the lower courts over the applicability of the ordinary rules of res judicata and full faith and credit in interstate extradition cases. Some States, like Nevada, have held that a judgment discharging a prisoner in an initial extradition proceeding is not entitled to res judicata or full faith and credit in a subsequent extradition proceeding *regardless* of the ordinary res judicata rules of the first jurisdiction. *See, e.g., In re Moskaluk*, 591 A.2d 95, 97 (Vt. 1991); *In re Russell*, 524 P.2d 1295, 1298 (Cal. 1974); *Letwick v. State*, 198 S.W.2d 830, 830-31 (Ark. 1947).

Other courts, in contrast, have recognized that a judgment granting habeas corpus relief in an initial extradition proceeding *is* entitled to res judicata effect and full faith and credit in subsequent extradition proceedings, at least where (as here) the initial proceeding was on the merits and the subsequent proceeding is based on the same evidence. That is the law in Florida, as noted above, and it is Florida law that should have governed here. *See also, e.g., People v. Coyle*, 654 P.2d 815, 817-18 (Colo. 1982); *Cain v. Moore*, 438 A.2d 723, 725 (Conn. 1980), *cert. denied.*, 454 U.S. 844 (1981); *id.*, at 725-26 (Cotter, C.J., concurring, joined by a majority of the Court); *Wells v. Sheriff, Carter County*, 442 P.2d 535, 540 (Okla. Crim. App. 1968); *People ex rel. Ritholz v. Sain*, 187 N.E.2d 241 (Ill. 1962); *Seigler v. Canterbury*, 318 P.2d 219, 220-21 (Colo. 1957); *People ex rel. Chakouian v. Hoy*, 183 N.Y.S.2d 980, 982 (Sup.Ct. 1959); *Ex parte Messina*, 128 S.W.2d 1082, 1085 (Mo. App. 1939). In some of these cases, res judicata was held to bar the subsequent extradition

proceeding; in others, it was not, because the prior proceeding involved different evidence or allegations or had been denied because of a procedural deficiency. All these cases, however, accept the application of res judicata and/or full faith and credit in the interstate extradition context—precisely the approach rejected below.

This difference of opinion has not gone unnoticed by commentators. "Where a second extradition proceeding is brought in a different state from an earlier proceeding in which the prisoner had been discharged upon habeas corpus, *there is a difference of opinion between the jurisdictions as to the effect of the earlier discharge*." Anita R. Shapiro, Annotation, Discharge on Habeas Corpus of One Held In Extradition Proceedings as Precluding Subsequent Extradition Proceedings, 33 A.L.R.3d 1443, 1444-45 (1970) (emphasis added). Indeed, respondent candidly acknowledged this split in authority below. *See* Resp. Br. in Nev. S.Ct. at 2 ("[T]here is no definitive authority on whether or not discharge on habeas corpus of one held for extradition bars subsequent extradition proceedings. Instead, *research shows that there is a clear split among courts*.") (emphasis added); *id.* at 11 (noting "*split of authority* whether a subsequent [extradition] proceeding is barred because an earlier one was discharged on habeas corpus") (emphasis added).

By applying a bright-line rule that extradition proceedings *per se* are not entitled to full faith and credit, the Nevada Supreme Court not only deepened that split in authority, but essentially brought the Extradition and Full Faith and Credit Clauses of the U.S. Constitution into direct conflict. It is far from self-evident, as the opinion below implicitly held, that the command of the Extradition Clause invariably trumps the command of the Full Faith and Credit Clause. Those two clauses are neighbors in Art. IV, and embody the same basic command that one State must respect (and aid) the judicial process of another State. Just as an asylum State must give full faith and credit to a demanding State's charging documents, a

demanding State must give full faith and credit to an asylum State's judicial determination that one is not a fugitive from justice. This Court has not previously addressed how these two companion clauses interrelate, and this case presents a good vehicle for doing so.

II. THE NEVADA SUPREME COURT ERRED IN HOLDING THAT PETITIONER WAS NOT ENTITLED TO PRESENT EVIDENCE THAT HE WAS NOT IN ARIZONA AT THE TIME OF THE ALLEGED CRIMES, EXACERBATING A SPLIT OF AUTHORITY IN THE LOWER COURTS.

The Nevada Supreme Court also incorrectly held that, in extradition proceedings, the courts of the asylum State may not consider evidence that the defendant was not in the demanding State at the time of the alleged crimes. That erroneous decision deepens a pre-existing split in the courts over whether this Court's decision in *Michigan v. Doran*, 439 U.S. 282 (1978), precludes the consideration of such evidence by the courts of the asylum State.

In a line of cases stretching back well into the nineteenth century, this Court has held that a person challenging an interstate extradition request has a federal constitutional right to present a court in the asylum state with evidence that he is not a "fugitive from justice." *See, e.g.*, *Doran*, 439 U.S. at 289; *South Carolina v. Bailey*, 289 U.S. 412, 419-22 (1933); *Drew v. Thaw*, 235 U.S. 432, 440 (1914); *People ex rel. McNichols v. Pease*, 207 U.S. 100, 108-112 (1907); *Munsey v. Clough*, 196 U.S. 364, 372-75 (1905); *Hyatt v. Corkran*, 188 U.S. 691, 709-710 (1903); *Roberts v. Reilly*, 116 U.S. 80, 95-97 (1885); *Ex parte Reggel*, 114 U.S. 642, 651-52 (1885).

Because "[f]ugitivity means presence in the demanding state when the crime was allegedly committed," *Moncrief v. Anderson*, 342 F.2d 902, 904 (D.C. Cir. 1964), the right to challenge fugitivity includes the right to present evidence that one was not present in the demanding state at the time the

alleged crime was committed. *See, e.g.*, *Bailey*, 289 U.S. at 420-22; *McNichols*, 207 U.S. at 109-12; *Munsey*, 196 U.S. at 374-75; *Hyatt*, 188 U.S. at 709-11; *Roberts*, 116 U.S. at 97; *Reggel*, 114 U.S. at 651-52. As the *Munsey* Court explained: "When it is conceded, or when it is so conclusively proved that no question can be made, that the person was not within the demanding state when the crime is said to have been committed ... then the court [in the asylum state] will discharge the defendant." 196 U.S. at 374.

The Nevada Supreme Court, however, refused to apply that rule, upholding the trial court's refusal to consider petitioner's evidence that he was outside the United States at the time of alleged crimes in Arizona—the very evidence that had convinced the Florida court that petitioner was not a "fugitive" subject to extradition. The Nevada Supreme Court held that this evidence did not relate to whether petitioner was a fugitive, and thus "should be raised before the courts in Arizona." *Castriotta*, 888 P.2d at 928-29 & nn. 1, 2. Respondent defends that theory in this Court, arguing that evidence negating petitioner's presence in Arizona at the time of the alleged crimes goes only to "his ultimate innocence" and is thus "irrelevant" to the issue of fugitivity. Opp. Br. at 13.

That approach conflicts not only with the controlling federal precedents cited above, but also with the majority view among the state high courts that—notwithstanding the summary nature of extradition proceedings—a person facing extradition has a federal constitutional right to present evidence that he was not in the demanding state at time of the alleged crime. *See, e.g.*, *State ex rel. Coryell v. Gooden*, 457 S.E.2d 138, 144 (W. Va. 1995); *In re Ropp*, 541 A.2d 86, 88 (Vt. 1988); *In re Rowe*, 423 N.E.2d 167, 170-71 (Ohio 1981); *King v. Davis*, 580 P.2d 1318, 1320 (Kan. 1978); *Walton v. State*, 566 P.2d 766, 767-68 (Idaho 1977); *Baker v. Laurie*, 375 A.2d 405, 407 n.1 (R.I. 1977); *In re Russell*, 524 P.2d 1295, 1298 (Cal. 1974); *Ross v. Hegstrom*, 254 A.2d 556, 560-61 (Conn. 1969).

Nevada is not alone, however, in holding that evidence relating to a person's presence in demanding state at the time of an alleged crime is inadmissible in an extradition proceeding. Texas and Georgia have long applied the same rule. *See, e.g., Yost v. State*, 861 S.W.2d 73, 75 (Tex.App. 1993); *Ex parte Geringer*, 778 S.W.2d 132, 134 (Tex. App. 1989); *Hooten v. State*, 264 S.E.2d 192, 193 (Ga.), *cert. denied*, 446 U.S. 942 (1980); *Larsen v. State*, 262 S.E.2d 97, 97 (Ga. 1979).

Moreover, the split in authority involves more than whether such evidence must be allowed in the first instance. Even those state courts that have acknowledged a federal constitutional right to present such evidence are divided over the *burden of proof* necessary to overcome the presumption of regularity attaching to a sister State's extradition request. Some courts have held that, in order to defeat extradition, a person must prove "beyond a reasonable doubt" that he was not in the demanding State at the time of the alleged crime. *See, e.g., Barrila v. Blake*, 461 A.2d 1375, 1378-79 (Conn. 1983); *In re Rowe*, 423 N.E.2d 167, 173-74 (Ohio 1981); *In re Hart*, 583 P.2d 411, 419-20 (Mont. 1978). Other courts, in contrast, have imposed the lesser burden of presenting "clear and convincing" evidence. *See, e.g., State ex rel. Coryell v. Gooden*, 457 S.E.2d 138, 144 (W. Va. 1995); *State v. Miller*, 480 N.W.2d 894, 896 (Iowa 1992) ("clear and satisfactory"); *Galloway v. Josey*, 507 So.2d 590, 593-94 (Fla. 1987); *Langley v. Hayward*, 656 P.2d 1020, 1022 (Utah 1982); *Walker v. State*, 315 A.2d 855, 856 (Me. 1974).

This division of opinion is hardly surprising, as this Court's pronouncements on the subject have been less than entirely consistent. This Court has variously described the burden of proof necessary to preclude extradition on grounds of fugitivity as "conclusiv[e]," *Munsey v. Clough*, 196 U.S. 364, 374 (1905); "clea[r] and satisfactor[y]," *McNichols v. Pease*, 207 U.S. 100, 112 (1907); and "beyond [a] reasonable doubt," *South Carolina v. Bailey*, 289 U.S. 412, 422 (1933).

This Court should resolve the uncertainty by granting *certiorari*, reaffirming the right to present evidence negating presence in the demanding State at the time of the alleged crimes, and clarifying the relevant burden of proof.

III. THE FACTS OF THIS CASE REPRESENT A MISCARRIAGE OF JUSTICE.

Finally, although outrageous facts do not alone justify a writ of *certiorari*, they can signal that something is awry in the system and that this Court's intervention is needed. We believe that is the case here:

a. Petitioner was tried and convicted of a felony in Arizona *in absentia*, even though his court-appointed attorney never notified Castriotta of the trial date, which had been continued. (Reply Br. App. 3a-4a; 6a-8a). And nowhere in the record does it appear that petitioner was even identified, by photograph or otherwise, at the trial *in absentia* – i.e., there was no determination, even *in absentia*, that petitioner was in Arizona at the time of the offense for which he was tried.

b. Although petitioner's conviction *in absentia* is very likely unconstitutional, *cf. Crosby v. United States*, 113 S. Ct. 748, 750-53 (1993), the Arizona prosecutor has essentially admitted that he fully intends to use the other counts charged against petitioner as leverage to dissuade him from challenging the trial *in absentia*.[2]

c. Furthermore, once the Florida court determined that petitioner was not a fugitive from justice in Arizona and thus could not be extradited, (Reply Br. App. 1a-2a), Arizona

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[2] The Arizona prosecutor told the trial judge that "[b]asically, what I would hope to be able to do when we finally apprehend him and get him sentenced, is to be able to dismiss these cases *once that I'm sure there is not going to be a problem with the appeal and so forth*, so I think that would be subject to *negotiation with counsel and the defendant*, so right now, I would just, you know, vacate any trial dates that we might have because I don't want to try him in absentia any more until we get him here." (Reply Br. App. 10a).

chose not to appeal. Rather, it simply left the outstanding arrest warrants against petitioner in the National Crime Information Center computer to try its hand at successive extradition attempts.

d. Sure enough, petitioner was soon rearrested on those warrants in Florida. Again, the Arizona Governor sought petitioner's extradition from Florida, based on the misrepresentation in the Arizona prosecutor's application for a Governor's requisition order that "*no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.*" (Reply Br. App. 13a).

e. Once again, however, the Florida Circuit Court refused to extradite petitioner, holding instead that its prior order granting the writ of habeas corpus "remains in full force and effect." (Reply Br. App. 15a-16a). Once again, Arizona did not appeal.

f. Instead, yet again, Arizona chose to try its luck at further successive attempts to extradite petition. This time, Arizona caused petitioner to be arrested in Nevada. Again, the Arizona prosecutor misrepresented to the Arizona Governor and the Nevada Governor and courts that no prior application for extradition had been made for petitioner growing out of the same underlying events. (Reply Br. App. 17a-18a). Once again, the Arizona Governor demanded extradition.

In our view, Arizona plainly is not playing by the rules. Just as a habeas petitioner may not abuse the writ with successive petitions, a State should not be allowed to abuse the extradition process by pursuing successive extradition requests in one State after another. We respectfully suggest that the Court should review this case to discourage this sort of prosecutorial overreaching.

CONCLUSION

The Court should either summarily reverse the decision below or grant the petition for *certiorari*.

Respectfully submitted,

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Dated: August 30, 1994

REPLY BRIEF APPENDIX

**IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND
FOR PINELLAS COUNTY, FLORIDA
CASE No. CRC 93-000702-C1**

**PAUL DAVID CASTRIOTTA,
a/k/a ROBLEY ROBINSON,**

Petitioner,

v.

**EVERRETT S. RICE, as Sheriff
of Pinellas County, Florida**

Respondent.
_____/

**ORDER
ON PETITIONERS MOTION FOR REHEARING**

THIS CAUSE coming on to be heard upon Petitioner's Motion for Rehearing, and the Court having heard argument of Counsel for Petitioner and Counsel for the State of Florida, and the Court finding that it had previously entered an Order and an Amended Order denying the Petition For Writ of Habeas Corpus, hereby:

ORDERS that the Motion for Rehearing be and the same is, GRANTED, and the Court further finds upon rehearing, as follows:

1. That the requisitioning documents in CRC 99-57653 CFANO-J are not on their face in order, and further;

2. That Petitioner is not a fugitive from justice. It is therefore:

ORDERED that Petitioner PAUL DAVID CASTRIOTTA a/k/a ROBLEY ROBINSON's Petition For Writ of Habeas Corpus, be and the same is, GRANTED, and it is further:

ORDERED that PAUL DAVID CASTRIOTTA, a/k/a ROBLEY ROBINSON, be released from the Pinellas County Jail on Arizona extradition Case No. CRC 99-57653 CFANO-J instanter.

DONE AND ORDERED, in Chambers, at Clearwater, Pinellas County, Florida, this 5th day of April, 1993.

/s/
Circuit Judge

Copy to:
Larry C. Hoffman, Esq.
State of Florida

AFFIDAVIT

STATE OF ARIZONA)
) **ss.**
County of Pima)

I, TIM ARMBRUSTER, being first duly sworn upon oath depose and say:

1. That I was Paul Castriotta's attorney in Pima County Superior Court Case No. CR-18937.

2. That the trial in CR-18937 was originally scheduled for January 8, 1987.

3. That on January 7, 1987, a hearing was held on a Motion to Continue the trial date. Paul Castriotta was not present at that hearing. The court continued the trial to January 15, 1987.

4. That I had no contact with Paul Castriotta between the January 7, 1987 hearing and the new trial date.

5. That I objected to the trial of January 15, 1987 being conducted in Paul Castriotta's absence.

6. That the trial was held without the presence of Paul Castriotta.

DATED this 18th day of November, 1992.

/s/
TIM ARMBRUSTER

SUBSCRIBED AND SWORN to before me a Notary Public, this 18th day of November, 1992, by TIM ARMBRUSTER.

/s/
Veronica I. Merriman
Notary Public

My Commission Expires:
May 16, 1994

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

No. CR-18937

The State of Arizona,
Plaintiff,
v.
Paul Castriotta,
Defendant.

Thursday, January 15, 1987
Tucson, Arizona

Reporter's Official Transcript
Excerpt From Proceedings Re Trial In Absentia

Before: The Honorable Philip Farringer, Judge

Appearances:

For The State:
Millard M. Rowlette, Esq.,
Deputy County Attorney

For The Defendant:
Timothy Lee Armbruster, Esq.,
Assistant Public Defender

Van G. Honeman, RPR, CM
Official Court Reporter, Div. #8
Pima County Superior Court
Tucson, Arizona

AFTERNOON SESSION, JANUARY 15, 1987

THE COURT: Good afternoon.

This is the time or the day set for trial of State vs. Paul David Castriotta, also known as Daniel Samson, and John Wayde Jay, a couple of also known as's.

The trial is only as to Castriotta since the defendant Jay has pled; is that correct?

MR. ROWLETTE: Correct, your Honor.

THE COURT: And my recollection is that the one count that is set for trial at this time is Count Four, the fraudulent scheme and artifice count; is that correct?

MR. ROWLETTE: Yes, it is, your Honor.

MR. ARMBRUSTER: Yes, sir.

THE COURT: Mr. Armbruster, I note the absence of your client from the courtroom. Is there anything you want to say in that regard?

MR. ARMBRUSTER: Your Honor, at this time, I wouldn't be prepared to go forward. My client is not present and I do not have his permission to proceed in his absence.

THE COURT: I believe that he was personally advised, was he not, of this trial date?

MR. ARMBRUSTER: Your Honor. I think—my recollection is that it was originally scheduled for last Thursday, and we came in and asked for a continuance from the Court at that time, and he was not present at the time that the case was rescheduled for the date today.

THE COURT: How was it—oh, it was both you and Mr. Rowlette that came in and requested a motion—both you and Mr. Rowlette requested a continuance; is that correct?

MR. ARMBRUSTER: That's correct, your Honor.

THE COURT: There was talk about the out of state witnesses and we had the hearing at some point on the relevance of certain testimony.

MR. ARMBRUSTER: Correct.

THE COURT: And Mr. Castriotta was not present on that occasion?

MR. ARMBRUSTER: No, he was not, your Honor.

THE COURT: Was that the date originally set for trial?

MR. ARMBRUSTER: The 8th was the date originally set for trial.

THE COURT: And—the 8th. That was last Thursday.

MR. ARMBRUSTER: Correct.

THE COURT: And was that the date that we had the hearing?

MR. ARMBRUSTER: That was—no. The day we had the hearing was the 9th. It was on Friday.

THE COURT: Was it the 8th on which you made the motion to continue?

MR. ARMBRUSTER: I believe the motion to continue was heard on Wednesday the 7th.

THE COURT: Have you heard from Mr. Castriotta, Mr. Armbruster?

MR. ARMBRUSTER: I have been in contact with him through the first part of this week.

THE COURT: Is there any reason to think that he doesn't know that we're proceeding at this time on this day?

MR. ARMBRUSTER: That's a kind of difficult question, your Honor.

THE COURT: Well, I guess what I'm—what's going through my mind is I imagine the defendant was personally

advised of the trial date of last Thursday, the 8th. Is that when it was set?

MR. ARMBRUSTER: Yes, your Honor, he had knowledge of that date.

THE COURT: And then he didn't appear on that date at the time we heard the motion to continue?

MR. ARMBRUSTER: Well, I think the motion to continue was actually heard on Friday the 9th, and—excuse me—the motion was heard on the 7th. He was not present at the time the motion to continue was heard.

THE COURT: See, you know, and now the next time that there is a motion to continue and there is some reluctance on the Court to grant it, you know why, among other reasons.

Mr. Rowlette, do you have anything you want to say?

MR. ROWLETTE: Yeah, your Honor.

I think what's happened here is that Mr. Armbruster is a little bit concerned about what he may believe to be some confidential communications between himself and his client. As he indicated to the Court, he has had contact with his client this week, and I think it's at least implicit that Mr. Armbruster is telling us that Mr. Castriotta knows that the trial is set for today, because this is the date actually set for trial, according to the Court's minute entry, and, you know, I think the case law is also in the state where even if you can't show that on the record the defendant was advised of the specific trial date, the defendant does have the responsibility under the law of maintaining contact with his attorney and knowing what the trial date is.

THE COURT: Yeah, I think you're right, and in light of the fact the defendant did have personal knowledge and was personally advised of the January 8 trial date and didn't appear on that date, and, apparently, no one has heard from him and there is no evidence of any valid reason for his absence, the Court finds that the defendant's absence is knowing and

intentional and voluntary and wilful and that he waives his right to be present at the trial.

Do you want to proceed in absentia, Mr. Rowlette?

MR. ROWLETTE: I'm willing to proceed in absentia, your Honor. I would prefer to have him here, but I am willing to proceed in absentia.

THE COURT: Let's proceed in absentia, then.

When we pick the jury, why don't we pick the jury the way we used to do it over in Federal Court, and that's exercise the strikes while we are all sitting here, instead of having the jury go out and wander around and take extra time. Any problem with that? We're going to be doing it at 5:00, you know.

MR. ROWLETTE: Yeah, I know, but, I mean, I think it's not going to make it that much faster, your Honor.

THE COURT: It sure does. You do it in five minutes instead of twenty-five, and I'll tell you that in thousands of cases tried in Tucson without any miscarriage of justice because the attorneys just sit there, and we can do it, believe me, it can be done. I have done it many times myself. Is there any big deal about that?

MR. ARMBRUSTER: I have no problem.

MR. ROWLETTE: I would prefer not to do that. Let's just take a fifteen minute break.

THE COURT: Let's do that. Let's exercise the strikes while they are here, and let's call the jury and get going.

DURING AFTERNOON SESSION JANUARY 16, 1987

(Proceedings had following trial re prior convictions and while waiting for jury verdict:)

MR. ARMBRUSTER: Your Honor, what are we going to do with the rest of Mr. Castriotta's cases?

THE COURT: This would be a Class 2 felony with two priors?

MR. ROWLETTE: Yeah.

THE COURT: I guess the issue—well, what do you plan to do about it?

MR. ROWLETTE: Basically, what I would hope to be able to do is when we finally apprehend him and get him sentenced, is to be able to dismiss these cases once that I'm sure there is not going to be a problem with the appeal and so forth, so I think that would be subject to negotiation with counsel and the defendant, so right now, I would just, you know, vacate any trial dates that we might have because I don't want to try him in absentia any more until we get him here.

THE COURT: What do you say to that, Mr. Armbruster?

MR. ARMBRUSTER: That's fine with me.

THE COURT: Is it all one case number?

MR. ROWLETTE: No. There is two case numbers, your Honor.

THE COURT: One of them is in this case?

MR. ROWLETTE: Yes.

THE CLERK: And the other is 19973.

THE COURT: And you have no objection, Mr. Armbruster, to vacating the trial dates?

MR. ARMBRUSTER: No, your Honor.

THE COURT: On motion of the State and good cause appearing because of the defendant's absconder status, and the State—or the defendant's non-appearance, and in light of the State's desire not to attempt to try the cases in absentia, it is ordered that the currently set trial dates in CR-18937 and 19973 are vacated, to be reset upon the defendant's apprehension.

DURING MORNING SESSION JANUARY 20, 1987

(The trial re prior convictions was continued to this date, and before taking the verdict in the trial re prior convictions, the following proceedings were had:)

MR. ROWLETTE: Your Honor, can we go on the record in the Castriotta case in just a second?

THE COURT: Yes.

MR. ROWLETTE: I asked Alan Davidon about the procedure as far as the bond forfeiture and he said the procedure, if you are willing to follow it, is for you to refer the matter to Commissioner Kipps.

THE COURT: I would be delighted to follow that procedure.

MR. ROWLETTE: Thank you.

THE COURT: It is ordered that the matter of bond forfeiture be referred to Commissioner Kipps for appropriate proceedings.

(The verdicts re prior convictions were taken.)

THE COURT: Is there anything else in the Castriotta case?

MR. ROWLETTE: No.

THE COURT: We have issued a bench warrant and so forth.

It is ordered that sentencing be set at such time as the defendant is apprehended.

MR. ROWLETTE: Thank you, your Honor.

CERTIFICATE

I, Van G. Honeman, do hereby certify that I took the machine shorthand notes in the foregoing matter; that the same was transcribed via computer-aided transcription; that the

preceding pages of typewritten matter are a true, correct and complete transcription of those proceedings ordered, to the best of my skill and ability.

/s/_____

Van G. Honeman RPR, CM
Official Court Reporter
Pima County Superior Court
Tucson, Arizona 87501

(The court reporter scanned the stenographic notes of the Motion to Continue Trial held Wednesday, January 7, 1987, and the Hearing on Motion to Suppress held Friday, January 9, 1987, and no mention was made at either hearing concerning advising the defendant of new trial date or trial would otherwise be held in absentia.)

OFFICE OF THE COUNTY ATTORNEY
COUNTY OF PIMA, STATE OF ARIZONA

TO HER EXCELLENCY
THE GOVERNOR OF ARIZONA

In compliance with your rules of practice respecting application for requisition for the extradition of fugitives from justice, I have the honor herewith to make application for a requisition upon the Governor of the State of Florida for the extradition of PAUL DAVID CASTRIOTTA, who is charged with the commission of a felony, to-wit: Fraudulent Scheme and Artifice, and who is a fugitive from justice of the State of Arizona, and who is now in Largo, Florida, and in furtherance of this application.

I HEREBY CERTIFY

First: That the full name of the person from whom extradition is asked is PAUL DAVID CASTRIOTTA and the name of the person who I hereby propose for designation as agent of the state herein is Clarence W. Dupnik, Sheriff of Pima County, or one of his designated agents.

Second: That, in my opinion, the ends of public justice require that the alleged criminal, whose extradition is hereby requested, be brought to this state for hearing on allegation violation of the crime listed above.

Third: That I have, as I believe, sufficient evidence to secure a conviction of said fugitive.

Fourth: That no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.

Fifth: That this application is not made for any private reason whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for and.

Sixth: That the fugitive is charged with the commission of a felony under Arizona Revised Statutes, Sections 13-2310, 13-701, 13-702, 13-801, 13-803, 13-808 and 13-604(B) and (D), which provide as follows:

SEE ATTACHED COPIES OF STATUTES

that by reason of the foregoing facts and the provisions of the laws of the State of Arizona hereinabove set out, the crime listed is a felony and, therefore, extraditable.

Seventh: That the offenses charged were committed on or about the 11th day of July, 1986, through the 20th day of July, 1986, the 15th day of July through the 16th day of July, 1986 and the 18th day of July, 1986 through the 4th day of August, 1986, in Tucson, Pima County, Arizona.

Eighth: That this application is made by Lori Winans, whose affidavit accompanies this application and I recommend that such requisition be granted.

Ninth: That several sets of papers in triplicate herein have been compared with each other and are in all respects exact counterparts.

/s/

RICK UNKLESBAY

Deputy County Attorney

County of Pima, Arizona

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE
OF FLORIDA, IN AND FOR PINELLAS COUNTY
CRIMINAL JUSTICE DIVISION

No. CRC 92-16027 CFANO-I,
93-0702-CI,
99-57653, 99-60551,
99-60555,

State of Florida,
v.
Paul David Castriotta,
also known as
Robley Robinson,
Defendant.

ORDER

THIS COURT having read counsel's submissions and heard counsel's arguments;

It is hereby ORDERED AND ADJUDGED:

1. That the Defendant's motion for reinstatement of bond as to case number 92-16027 is denied without prejudice to file and argue this motion in front of the Honorable Claire K. Luten.

2. As to case number 99-57653 the Defendant is released instanter. Any bond previously set in this matter is withdrawn. Any hold placed on the Defendant for this case shall be removed from the criminal information system.

3. As to case number 93-0702 this court has already ruled on this case and no other action is ordered. The court's previous ruling as to case number 93-0702 remains in full force and effect.

4. As to case number 99-60555, the Defendant is released instanter. Any bond set previously on this case is withdrawn as the District Attorney in Dallas County, Texas has dismissed these charges.

5. As to case number 99-60551, the Defendant's bond is set at $10,000.00. The court's previous orders setting the bond on this case at $5,000.00 and revoking this bond and setting the bond at $50,000.00 are hereby withdrawn.

6. It is a condition of the bond in case number 99-60551 that the Defendant not leave the jurisdiction of this court.

7. This court declines to rule at this time on whether the Defendant's incarceration in Orange County, Florida amounted to a surrender. The Defendant may bring this issue up again at a later time.

DONE AND ORDERED in open court on the 30th day of November 1993 and signed in chambers on the 31st day of December 1993.

/s/
Honorable Brandt Downey
Circuit Court Judge

OFFICE OF THE COUNTY ATTORNEY
COUNTY OF PIMA, STATE OF ARIZONA

TO HER EXCELLENCY
THE GOVERNOR OF ARIZONA

In compliance with your rules of practice respecting application for requisition for the extradition of fugitives from justice, I have the honor herewith to make application for a requisition upon the Governor of the State of Nevada for the extradition of PAUL DAVID CASTRIOTTA, who is charged with the commission of felonies, to-wit: In CR-18937: FRAUDULENT SCHEME AND ARTIFICE (Count 4), and thereafter, said fugitive failed to appear as ordered and a Bench Warrant for his arrest was issued, and who is further charged with the commission of felonies, to wit: in CR-18937, THEFT OF A CREDIT CARD, THEFT BY CONTROL and BURGLARY IN THE SECOND DEGREE, and in CR-19973, FRAUDULENT SCHEME AND ARTIFICE, (two counts), and THEFT OF A CREDIT CARD, who is a fugitive from justice of the State of Arizona, and who is now in Las Vegas, Nevada, and in furtherance of this application.

I HEREBY CERTIFY

First: That the full name of the person from whom extradition is asked is PAUL DAVID CASTRIOTTA and the name of the person who I hereby propose for designation as agent of the state herein is Clarence W. Dupnik, Sheriff of Pima County, or one of his designated agents.

Second: That, in my opinion, the ends of public justice require that the alleged criminal, whose extradition is hereby requested, be brought to this state for hearing on allegation violation of the crime listed above.

Third: That I have, as I believe, sufficient evidence to secure a conviction of said fugitive.

Fourth: That no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.

Fifth: That this application is not made for any private reason whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for such end.

Sixth: That the fugitive is charged with the commission of felonies under Arizona Revised Statutes, Sections 13-2102(A)(1),(2) and (B), 13-1802(A)(1) and (C), 13-1507, 13-2310, 13-604(A),(B),(C),(D),(H), 13-701, 13-702, 13-801, 13-804, 13-803, 13-808, 13-812, which provide as follows:

SEE ATTACHED COPIES OF STATUTES

that by reason of the foregoing facts and the provisions of the laws of the State of Arizona hereinabove set out, the crimes listed are felonies, and, therefore, extraditable.

Seventh: That the offenses charged were committed on or about the 11th day of July, 1986 through the 4th day of August, 1986, in Tucson, Pima County, Arizona.

Eighth: That this application is made by Lori Winans, whose affidavit accompanies this application and I recommend that such requisition be granted.

Ninth: That several sets of papers in triplicate herein have been compared with each other and are in all respect exact counterparts.

/s/
RICK A. UNKLESBAY
Deputy County Attorney
County of Pima, Arizona